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CHAPTER 1

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Part 1

Geophysical Exploration

Part Cross-References

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Surface owner damage and disruption compensation, Title 82, ch. 10, part 5.

82-1-101. Persons required to comply. (1) A person, firm, or corporation operating individually or through agents within the state of Montana for the purpose of seismic exploration in which exploration entry is made upon the surface estate for the acquisition of geophysical data for any purpose whatsoever, and which person, firm, or corporation either through its own employees or by hiring the services of others operates seismograph crews, as the term is generally known, shall comply with the following provisions of this part; provided, however, that compliance with the provisions of this part by a seismograph crew or its employer shall constitute compliance herewith by that person, firm, or corporation who has engaged the services of such crew or its employer as an independent contractor insofar as the geophysical operations of such crew are concerned.

(2) The board of oil and gas conservation shall adopt rules:

(a) requiring adequate identification of seismic exploration crews operating in this state;

(b) designating areas where seismic exploration and activities may not be allowed; and

(c) regulating the plugging and abandonment of seismic shot holes.

History: En. Sec. 1, Ch. 235, L. 1955; R.C.M. 1947, 69-3301; amd. Sec. 1, Ch. 116, L. 1983; amd. Sec. 1, Ch. 339, L. 1985; amd. Sec. 1, Ch. 190, L. 1989.

Cross-References

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Notice of intention to drill or conduct seismic operations to be filed with Board of Oil and Gas Conservation, 82-11-122.

82-1-102. Doing business within state — resident agent. A person, firm, or corporation shall be deemed to be doing business within the state of Montana when engaged in such geophysical exploration within the boundaries of this state and shall, if not already qualified to do business within this state with a designation of an agent within the state for service of process prior to such time, file with the secretary of state of the state of Montana an authorization, which authorization shall designate a resident agent for the service of process in any action which may be pending in a court in this state, which cause of action may have arisen out of such geophysical exploration.

History: En. Sec. 2, Ch. 235, L. 1955; R.C.M. 1947, 69-3302.

82-1-103. Notice of intention to explore. A person, firm, or corporation desiring to engage in geophysical exploration within the state of Montana shall file a notice of intention to engage in the exploration with the county clerk and recorder in each county in which exploration is to be carried on or engaged in. The notice shall be filed prior to the actual commencement of the exploration.

History: En. Sec. 3, Ch. 235, L. 1955; amd. Sec. 34, Ch. 39, L. 1977; R.C.M. 1947, 69-3303.

Cross-References

Fees for recording by County Clerk, 7-4-2631.

Notice of drilling operations, 82-10-503.

Notice of intention to drill or conduct seismic operations to be filed with Board of Oil and Gas Conservation, 82-11-122.

82-1-104. Indemnification of property owners — restoration of surface. (1) (a) Prior to performing seismic activity, a person, firm, or corporation shall file with the secretary of state a surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state in the amount of $10,000 for a single seismic crew or a blanket surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state in the amount of $25,000 for all seismic crews operating within the state for the person, firm, or corporation to indemnify the owners of property within this state for physical damages to their property resulting from any seismic exploration. Partial or complete forfeiture of the surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state must be determined by the appropriate court of civil jurisdiction.

(b) The secretary of state may charge a fee for the filing of the surety bond, cash, certificate of deposit, or other instrument required under this section. The fee must be set by rule and deposited in accordance with 2-15-405.

(2) Unless the owner of the surface rights and the person, firm, or corporation conducting seismic activity agree otherwise, it is the obligation of the person, firm, or corporation upon completion of seismic exploration to plug all "shot holes" in the manner specified by the board

of oil and gas conservation to contain any water within its native strata by filling the holes with bentonite mud, cement, or other material approved by the board of oil and gas conservation to contain the water. In addition, the holes must be capped in a manner and with a material specified by the board of oil and gas conservation so that the top of the cap is a sufficient depth below the surface of the land to allow cultivation. The portion of the holes above the cap must be filled with native material.

(3) Upon completion of any seismic exploration, the person, firm, or corporation conducting the exploration shall remove all stakes, markers, cables, ropes, wires, and debris or other material used in the exploration and shall also restore the surface around any shot holes as near as practicable to its original condition.

(4) The surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state must remain on file with the secretary of state so long as the exploration is conducted, plus an additional 5 years after the cessation of the exploration activities. The aggregate liability for the exploration activities may not exceed the amount of the surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state. Upon the filing of the surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state, the secretary of state shall issue to the person, firm, or corporation a certificate showing that the surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state has been filed. The certificate must contain the name of the designated resident agent within the state for service of process for the person, firm, or corporation.

History: En. Sec. 4, Ch. 235, L. 1955; amd. Sec. 1, Ch. 175, L. 1961; amd. Sec. 1, Ch. 272, L. 1977; R.C.M. 1947, 69-3304; amd. Sec. 2, Ch. 116, L. 1983; amd. Sec. 2, Ch. 339, L. 1985; amd. Sec. 10, Ch. 33, L. 2007; amd. Sec. 2, Ch. 69, L. 2015.

Cross-References

Accrual of cause of action for waste, trespass, or injury committed during exploration, 27-2-303.
Suretyship, Title 28, ch. 11, part 4.
Enforcement by County Attorney, 82-1-109.
Inventory of abandoned shot holes, 82-10-402.
Waste of oil and gas prohibited, 82-11-121.
Restrictions on oil and gas operations by Board of Oil and Gas Conservation, 82-11-123.
Requirements relating to waste preservation, 82-11-124.

82-1-105. Exploration permit. (1) Upon compliance with the provisions of this section, namely the filing of a notice of intention to engage in the exploration and a certificate or a copy of the certificate from the secretary of state certifying the name and address of the resident agent for service of process for the person, firm, or corporation desiring to engage in the exploration and certifying that the required surety bond has been filed with the secretary of state, the county clerk and recorder shall issue to the person, firm, or corporation a geophysical exploration permit.

(2) The permit must show:

(a) the name of the person, firm, or corporation and the principal place of business;

(b) if a firm or corporation, the names and addresses of its officers;

(c) the name and address of the resident agent for service of process for the person, firm, or corporation;

(d) that a notice of intention to engage in geophysical exploration has been filed; and

(e) that a good and sufficient surety bond has been filed by the person, firm, or corporation, naming the surety company and giving its address.

(3) The permit must be signed by the county clerk and recorder or the clerk and recorder's deputy and bear the official county seal. The permit is valid and effective for all geophysical crews of the permittee during the calendar year in which it is issued.

(4) The cost of the permit is $5 per calendar year or any portion of the calendar year for which issued, and the revenue realized from the permit must go to the county issuing the permit. The funds must be applied toward payment of the cost of printing the permits, which must be printed at the county seat, and excesses must be deposited in the county's general fund.

(5) If printed forms are not available at the time any person, firm, or corporation desires the permit and qualifies for its issuance, a typewritten or other form of reproduction of the permit may be used, the fee of $5 must still be paid for its issuance, and this fee must be disposed of in the same manner.

(6) The permit or a copy of the permit must be carried by the person or by the agent of the firm or corporation at all times during the period of the geophysical exploration and must be exhibited upon demand of any county or state official.

History: **En. Sec. 5, Ch. 235, L. 1955; amd. Sec. 35, Ch. 39, L. 1977; R.C.M. 1947, 69-3305; amd. Sec. 2711, Ch. 56, L. 2009.**

Cross-References

Inventory of abandoned shot holes — approval of drilling permits, 82-10-402.

82-1-106. County clerk to notify board of issuance of permit — compliance. (1) The county clerk and recorder of the county in which a permit for geophysical activity is issued will immediately forward notice of the issuance of such permit to the board of oil and gas conservation.

(2) The board shall notify the county clerk and recorder of the county if the person, firm, or corporation which has obtained a permit is not in compliance with any applicable requirement for engaging in geophysical activity within the state.

(3) If the board of oil and gas conservation determines that a person, firm, or corporation has violated any provisions of this part, the board shall take necessary action to assure compliance.

History: **En. 69-3305.1 by Sec. 2, Ch. 272, L. 1977; R.C.M. 1947, 69-3305.1(1) thru (3).**

Cross-References

Board of Oil and Gas Conservation — composition — allocation — quasi-judicial, 2-15-3303.

Notice of intention to drill or conduct seismic operations to be filed with Board of Oil and Gas Conservation, 82-11-122.

82-1-107. Permitholder to furnish information to surface owner. (1) Before commencing seismic activity, the person, firm, or corporation conducting the seismic activity shall notify the surface owner, as defined in 82-10-502, as to the approximate time schedule of the planned activity and shall provide copies of Title 82, chapter 10, part 5, this part, and, if available, a current publication produced by the environmental quality council entitled "A Guide to Split Estates in Oil and Gas Development". Upon request, the following information must also be furnished:

(a) the name and permanent address of the seismic exploration firm, along with the name and address of the firm's designated agent for the state if different from that of the firm;

(b) evidence of a valid permit to engage in seismic exploration;

(c) the name and address of the company insuring the seismic firm or, if self-insured, evidence of the self-insurance;

(d) the number or other identifying information for the surety bond, cash, certificate of deposit, or other instrument acceptable to the secretary of state and required in 82-1-104;

(e) a description of the planned seismic activity and where it will take place; and

(f) the anticipated need, if any, to obtain water from the surface owner during planned seismic activity.

(2) The surface owner is responsible for providing the permitholder with the name and permanent address of a responsible person with whom communication may be maintained.

(3) The surface owner is responsible for providing the name and address of the permitholder to any lessees, tenants, or other parties responsible for surface operations on the property.

History: **En. 69-3305.1 by Sec. 2, Ch. 272, L. 1977; R.C.M. 1947, 69-3305.1(4); amd. Sec. 3, Ch. 339, L. 1985; amd. Sec. 11, Ch. 33, L. 2007; amd. Sec. 1, Ch. 57, L. 2007.**

82-1-108. Filing record of work performed. (1) Within 3 months from the day that any firing of shotpoints in seismic exploration is done by a person, firm, or corporation within this state, the person, firm, or corporation shall file with the county clerk and recorder of the county in which the work was done a record showing each township and range within the county in which the work was performed and the approximate date on which the work was performed.

(2) The person, firm, or corporation shall file with the county clerk and recorder a record showing the location of each shotpoint and date fired within a maximum area of any square, 4-section area of land, upon written request of the county clerk and recorder. The request must be based upon the complaint of a property owner that physical damage to the owner's property has resulted from the use of the seismograph and explosives in seismic operations at some location within the maximum 4-square mile area, and the request must designate the name and

address of the complaining person and the approximate date and nature of the alleged damages. The required record of operations in response to the request of the county clerk and recorder must be supplied within 30 days from the date on which the request is received.

History: **En. Sec. 6, Ch. 235, L. 1955; R.C.M. 1947, 69-3306; amd. Sec. 1, Ch. 201, L. 1979; amd. Sec. 4, Ch. 339, L. 1985; amd. Sec. 2712, Ch. 56, L. 2009.**

82-1-109. Enforcement by county attorneys. It shall be the duty of the several county attorneys to see that the provisions herein contained are complied with and that this law is enforced.

History: **En. Sec. 7, Ch. 235, L. 1955; R.C.M. 1947, 69-3307.**

82-1-110. Penalty. A failure to comply with the terms of this part shall be deemed a misdemeanor and shall be punishable as is elsewhere provided in this code, either by fine or imprisonment, or both. The geophysical permit of any person, firm, or corporation convicted of a violation of the plugging requirements of this part shall be revoked and may not be renewed for a period of 2 years after conviction.

History: **En. Sec. 8, Ch. 235, L. 1955; amd. Sec. 3, Ch. 272, L. 1977; R.C.M. 1947, 69-3308.**

Cross-References

Definition of misdemeanor, 45-2-101.
Criminal responsibility of corporations, 45-2-311.
Accountability for conduct of corporation, 45-2-312.
Misdemeanor penalty when no penalty specified, 46-18-212.

82-1-111. Definitions. As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Coal" means a combustible carbonaceous rock formed from the compaction and induration of variously altered plant remains. Coal does not include:

(a) methane gas or any other natural gas that may be found in any coal formation;
(b) oil shale; or
(c) gilsonite.

(2) "Gas" means all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas found in any coal formation, as produced at the wellhead and not defined as oil in subsection (3).

(3) "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form by ordinary production methods and that are not the result of condensation of gas before or after it leaves the reservoir.

History: **En. Sec. 1, Ch. 379, L. 1993.**

Part 2
Cancellation and Forfeiture of Oil, Gas, or Mineral Leases

Part Cross-References

Landlord and tenant, Title 70, ch. 26.

82-1-201. Release of record upon forfeiture, cancellation, or expiration of lease — penalty. (1) When an executed and recorded oil, gas, or other mineral lease is forfeited, canceled, or expires, it is the duty of the lessee, the lessee's successor, or assigns, within 60 days from the date of the forfeiture, cancellation, or expiration of the lease, to have the lease or abstract of the lease released from record in the county where the leased land is situated without cost to the lessor.

(2) A lessee may request the recordation of an assignment or release of more than one lease in a single instrument, and an instrument involving more than one lease made under this subsection must be treated for public recording purposes as a single request from the lessee.

(3) A lessee who fails to comply with subsection (1) within 30 days of written notice from the lessor is guilty of a misdemeanor punishable by a fine of up to $250.

History: **En. Sec. 1, Ch. 22, L. 1917; re-en. Sec. 6902, R.C.M. 1921; re-en. Sec. 6902, R.C.M. 1935; amd. Sec. 5, Ch. 218, L. 1971; R.C.M. 1947, 73-114; amd. Sec. 1, Ch. 365, L. 1985; amd. Sec. 1, Ch. 228, L. 1997.**

Cross-References

Misdemeanor defined, 45-2-101.
Criminal responsibility of corporations, 45-2-311.
Accountability for conduct of corporation, 45-2-312.

82-1-202. Action to compel release — procedure without court action. (1) If the lessee or assignee of a lease neglects or refuses to execute a release as provided by this part, the owner of the leased premises may sue in any court of competent jurisdiction to obtain the release, and in that action the owner may also recover from the lessee or the lessee's successor or assigns the sum of $100 as damages, all costs, together with reasonable attorney fees for preparing and prosecuting the suit, and any additional damages that the evidence in the case warrants. Writs of attachment may issue as in other cases. If in the action the plaintiff fails to establish the forfeiture of the lease, attorney fees must be allowed to the lessee or assignee of the lease. Issues in regard to attorney fees must be determined in the same manner as other issues in those actions.

(2) When, by its terms, an oil or gas lease has expired and is subject to forfeiture for nonperformance and more than 3 years have elapsed since the expiration, the owner of the leased premises, in addition to all other remedies, may serve a written notice on the lessee or on the assignee of the lease, and the notice must state:

(a) the names of the lessor, lessee, and assignee of the lease if assigned;

(b) the date of the lease and the date of the expiration of the lease;

(c) the description of the lands leased;

(d) the place, book, and page where the lease is recorded; and

(e) that if the lessee or assignee fails to execute a release of record of the lease or abstract of the lease, the lease must be terminated and is of no effect and must cease to be a lien upon the lands described in the lease, unless the lessee or the assignee of the lease, within 60 days from the date of service of the notice, files, in the county clerk's office in the county where the lease or abstract of the lease is recorded, an affidavit stating that the lease is in effect and delivers a copy of the lease to the owner of the leased lands.

(3) If the lessee or the assignee of the lease resides in the county where the lease or abstract of the lease is recorded, the notice must be personally served on that person. If the lessee or the assignee of the lease does not reside in that county but the lessee's or assignee's address appears on the records in that county clerk's office or is otherwise known, the notice must be mailed by certified mail to that person at that address, and in addition the notice must be published once a week for 2 consecutive weeks in a newspaper of general circulation in the county in which the lands are situated. If the address of the lessee or assignee is unknown, the notice must be published in the manner provided in this subsection. The date of service of the notice, if served personally, the date of mailing, if served by mail, and the first date of publication of the notice, if published, must be at least 60 days before the date of termination referred to in the notice.

(4) Upon the expiration of the time mentioned in the notice, if the affidavit of the lessee or assignee has not been filed as provided in this section, the owner of the leased lands shall file an affidavit of service of the notice in the county clerk's office of the county in which the lands are located, and the affidavit must be kept as a permanent file in the clerk's office. This proof of notice when filed is prima facie evidence of the sufficiency of the notice, and from the filing of the notice the lease is terminated and the lands are released from the lien of the lease.

History: En. Sec. 2, Ch. 22, L. 1917; re-en. Sec. 6903, R.C.M. 1921; amd. Sec. 1, Ch. 18, L. 1929; re-en. Sec. 6903, R.C.M. 1935; amd. Sec. 1, Ch. 146, L. 1947; amd. Sec. 6, Ch. 218, L. 1971; amd. Sec. 36, Ch. 39, L. 1977; R.C.M. 1947, 73-115; amd. Sec. 2713, Ch. 56, L. 2009.

Cross-References

Original jurisdiction of District Courts, 3-5-302.

Prejudgment writs of attachment, Title 27, ch. 18.

Quieting title to real property generally, Title 70, ch. 28, part 1.

82-1-203. Demand for release prior to action. At least 20 days before bringing the action provided for in this part, the owner of the leased land, either personally or by the owner's agent or attorney, shall demand of the holder of the lease, if the demand by ordinary diligence can be made in this state, that the lease or abstract of the lease be released of record. The demand must be written. When written, a copy, when shown to be a copy, may be used as evidence in any court with the same force and effect as the original.

History: En. Sec. 3, Ch. 22, L. 1917; re-en. Sec. 6904, R.C.M. 1921; re-en. Sec. 6904, R.C.M. 1935; amd. Sec. 7, Ch. 218, L. 1971; R.C.M. 1947, 73-116; amd. Sec. 189, Ch. 575, L. 1981; amd. Sec. 2714, Ch. 56, L. 2009.

82-1-204. Joinder of plaintiffs in actions concerning oil and gas leases. (1) In an action for the cancellation of an oil and/or gas lease or leases or quieting title against the claims thereunder, two or more plaintiffs may join in a single action against a common lessee and any one claiming by, through, or under such lessee as an assignee or otherwise. In the complaint in such action the cause or causes of action of each plaintiff shall be set forth separately and there shall be designated the lease or leases or claims or interests sought to be canceled or quieted. It shall be no defense to such an action that the lands of the plaintiffs are noncontiguous or that there is a lack of mutuality of interest between the plaintiffs in the subject of the action or in the relief sought, and the decree in such action shall specify the lease, leases, claims, or interests canceled or quieted.

(2) This procedure shall be in addition to and not in substitution of any existing remedies now allowed by law.

History: En. Secs. 1, 2, Ch. 135, L. 1939; R.C.M. 1947, 93-2813, 93-2814.

Cross-References

Quieting title to property generally, Title 70, ch. 28, part 1.

Part 3
Trusts for Unlocatable Mineral Owners

Part Cross-References

Trust Code, Title 72, ch. 38.

82-1-301. Definition. The word "person", as used in this part, shall mean any individual, corporation, partnership, joint venture, trust or other entity capable of owning real property in Montana.

History: En. Sec. 6, Ch. 513, L. 1979.

82-1-302. Creation of trust for unlocatable mineral, leasehold, or royalty interest owners. (1) Any person who owns an interest in minerals underlying a tract of land may petition the district court of the county in which the tract or a portion of the tract is located to declare a trust in favor of other persons also owning or claiming an interest in the minerals underlying the tract if their place of residence and present whereabouts is unknown and cannot reasonably be ascertained.

(2) In requesting the appointment of a trustee, the petitioner shall show that:

(a) a diligent but unsuccessful effort to locate the absent owner or claimant has been made; and

(b) appointment of a trustee will be in the best interest of all owners of an interest in the minerals.

(3) After determining that the conditions of subsection (2) have been met, the court shall appoint the clerk of court or, if the clerk of court declines to act as trustee, the department of revenue as trustee and shall authorize the clerk of court or the department to execute and deliver an oil, gas, or other mineral lease, a ratification, a division order, or any other related document or instrument on the terms and conditions as the court may approve.

(4) If at any time a clerk of court decides to not continue as trustee for a trust for unlocatable mineral, leasehold, or royalty interest owners, the district court shall appoint the department of revenue to act as trustee. Upon the department of revenue's appointment as trustee, the clerk of court shall remit all funds and interest held in the trust to the department of revenue.

History: En. Sec. 1, Ch. 513, L. 1979; amd. Sec. 1, Ch. 126, L. 1997.

Cross-References

Duties of trustees, Title 72, ch. 38, part 8.

82-1-303. No further liability for petitioner. If a trust in favor of unlocatable owners or claimants of an interest in minerals has been created and all bonuses, rental payments, royalties, and other income due to the unlocatable owners are being or have been paid to the trustee, the person petitioning for creation of the trust is not liable for further claims by unlocatable owners for bonuses, rental payments, royalties, and other income produced after the creation of the trust.

History: En. Sec. 2, Ch. 513, L. 1979; amd. Sec. 190, Ch. 575, L. 1981.

Cross-References

Liability of trustees to beneficiaries, Title 72, ch. 38, part 10.

82-1-304. Administration of trust. (1) The administration of the trust must comply with the appropriate provisions regulating trusts contained in Title 72.

(2) Trustee or attorney fees may not be paid from the trust proceeds.

(3) All bonuses, rental payments, royalties, and other income must be paid to the trustee until the trust is terminated and notice of its termination given to all interested parties. The trustee shall distribute all money held in the trust to the person or persons entitled to the money upon the order of the district court.

(4) A trust in favor of unlocatable owners must be kept in force until the unlocatable owners of the mineral interest in question have successfully claimed their share of the funds held in trust and have filed the notice, as provided in 82-1-306.

(5) The trustee shall invest funds in a prudent manner, as provided in 72-38-902. Fifty percent of the interest earned on each trust must be credited to the department of revenue or, if the clerk of the court is the trustee, to the general fund of the county in which the mineral interest is located to defray the costs of administration.

(6) Funds held in the trusts are subject to the provisions governing abandoned property contained in Title 70, chapter 9.

History: En. Sec. 3, Ch. 513, L. 1979; amd. Sec. 219, Ch. 685, L. 1989; amd. Sec. 2, Ch. 126, L. 1997; amd. Sec. 159, Ch. 264, L. 2013.

82-1-305. Trust for unlocatable mineral, leasehold, and royalty interest owners — penalty. (1) A person may not personally hold for longer than 6 months any bonuses, rental payments, royalties, or other income for unlocatable owners or claimants of an interest in minerals underlying a tract of land. Within the 6-month period, the person shall petition the district court for creation of a trust, as provided in 82-1-302.

(2) A person failing to comply with subsection (1) is liable for all attorney fees and court costs and interest on funds subject to subsection (1) at twice the current average passbook account rate paid by financial institutions in any district in which the property or part of the property is located.

History: En. Sec. 4, Ch. 513, L. 1979; amd. Sec. 3, Ch. 126, L. 1997.

82-1-306. Filing of addresses. (1) Upon the payment of a $5 fee, a person claiming an interest in minerals underlying a tract of land that is the subject of a trust proceeding under 82-1-302 may file with the clerk and recorder of each county in which the land is located a notice containing the person's address and a description of the person's interest in the minerals. Filing the notice creates a rebuttable presumption that the person owns the interest claimed.

(2) The clerk and recorder shall forward a copy of the notice to the trustee of the trust.

History: En. Sec. 5, Ch. 513, L. 1979; amd. Sec. 4, Ch. 126, L. 1997.

Part 4
Constitutional Challenges

82-1-401. Determination of constitutionality. In any action filed in district court invoking the court's original jurisdiction to challenge the constitutionality of a licensing or permitting decision made pursuant to Title 75 or Title 82 or activities taken pursuant to a license or permit issued under Title 75 or Title 82, the plaintiff shall first establish the unconstitutionality of the underlying statute.

History: En. Sec. 2, Ch. 361, L. 2003.

Part 5
Exemption of Fossils

82-1-501. Fossils exempted. Fossils, as defined in 1-4-112, are not minerals and are exempt from the provisions of this title.

History: En. Sec. 3, Ch. 136, L. 2019.

Part 6
Critical Infrastructure Facility — Trespass

82-1-601. Definitions. As used in 82-1-601 through 82-1-604, the following definitions apply:

(1) "Critical infrastructure" means systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of the systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.

(2) "Critical infrastructure facility" means:

(a) one of the following:

(i) a petroleum or alumina refinery;

(ii) an electric generating facility, substation, switching station, electrical control center, or electric transmission and distribution lines and associated equipment infrastructure;

(iii) a chemical, polymer, or rubber manufacturing facility;

(iv) a water intake structure, water treatment facility, wastewater treatment plant, or pump station;

(v) a natural gas compressor station, including but not limited to pipeline interconnections, a city gate or town border station, a metering station, aboveground piping, and a regulation station and natural gas storage facility;

(vi) a liquid natural gas terminal or storage facility;

(vii) a telecommunications central switching office;

(viii) wireless telecommunications infrastructure;

(ix) a port, railroad switching yard, railroad tracks, trucking terminal, or other freight transportation facility;

(x) a gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas or natural gas liquids;

(xi) a transmission facility used by a federally licensed radio or television station;

(xii) a steelmaking facility that uses an electric arc furnace to make steel;

(xiii) a facility identified and regulated by the United States department of homeland security chemical facility anti-terrorism standards program;

(xiv) a dam that is regulated by the state, the federal government, or a tribal government;

(xv) a natural gas distribution utility facility, including but not limited to pipeline interconnections, a city gate or town border station, a metering station, aboveground piping, a regular station, and a natural gas storage facility;

(xvi) aboveground oil, gas, hazardous liquid, and chemical pipelines;

(xvii) aboveground portions of an oil or natural gas well and associated production facilities;

(xviii)aboveground portions of a mineral or metal mining facility;

(xix) correctional facilities;

(xx) cable television, broadband, and wired communications infrastructure, including headends, poles, cable television and broadband lines, coaxial and fiber optic lines, and other equipment attached to cable television lines, broadband, and wired communications infrastructure;

(xxi) military installations, including but not limited to training areas and armories; and

(xxii) a crude oil, inclusive of Y-grade or natural gas liquids, or a refined products storage and distribution facility, including but not limited to a value site, pipeline interconnection, pump station, metering station, below or aboveground pipeline or piping, and truck loading or offloading facility;

(b) a facility for the construction of a location listed in subsection (2)(a); or

(c) a below or aboveground portion of an oil, gas, hazardous liquid, or chemical transmission or distribution pipeline, tank, railroad facility, or other facility that is completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs that are posted on the property that indicate that entry is forbidden without site authorization.

(3) "Organization" means a group of people, structured in a specific way to achieve a series of shared goals.

History: En. Sec. 1, Ch. 522, L. 2021; amd. Sec. 1, Ch. 116, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 116, L. 2025. Amendment effective October 1, 2025.

Cross-References

Prohibited transactions with foreign adversaries, 35-30-103.

82-1-602. Criminal penalties. (1) Except as provided in 82-1-604, a person who purposely or knowingly trespasses on property containing a critical infrastructure facility:

(a) that is completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders with intent to purposely or knowingly damage, destroy, vandalize, deface, tamper with equipment, or materially impede or inhibit operations of the facility shall, on conviction, be guilty of a felony punishable by a fine of not more than $4,500 or by imprisonment for not more than 18 months or both; and

(b) that is clearly marked with a sign or signs that are posted on the property that indicate that entry is forbidden without site authorization with intent to purposely or knowingly damage, destroy, vandalize, deface, tamper with equipment, or materially impede or inhibit operations of the facility shall, on conviction, be guilty of a felony punishable by a fine of not more than $4,500 or by imprisonment for not more than 18 months or both.

(2) A person who purposely or knowingly damages, destroys, vandalizes, defaces, or tampers with the equipment of a critical infrastructure facility:

(a) causing less than $1,500 in damages shall, on conviction, be guilty of a misdemeanor and may be incarcerated for any term not to exceed 6 months or be fined an amount not to exceed $500, or both, and must be ordered to make restitution in an amount and manner to be set by the court; and

(b) causing damages greater than $1,500 shall, on conviction, be guilty of a felony punishable by a fine of not more than $150,000 or by imprisonment for not more than 30 years, or both.

(3) An organization found to be in a conspiracy, as the term is used in 45-4-102, with persons who are found to have committed any of the crimes provided in subsection (1) or (2) may be punished by a fine up to 10 times the amount of the fine provided for the appropriate crime.

History: En. Sec. 2, Ch. 522, L. 2021; amd. Sec. 2, Ch. 116, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 116, L. 2025. Amendment effective October 1, 2025.

Cross-References

Criminal trespass to property, 45-6-203.

82-1-603. Civil penalties. (1) A person who trespasses in a critical infrastructure facility that is completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or that is clearly marked with a sign or signs that are posted on the property that indicate that entry is forbidden without authorization, and enters with intent to willfully damage, destroy, vandalize, deface, tamper with equipment, or impede or inhibit operations of the facility may be held liable for damages to personal or real property while trespassing, including damages and expenses from network performance or outage issues proximately caused by the trespass.

(2) A person or entity that directs a person to trespass as described in subsection (1), compensates, provides consideration to, or remunerates a person for trespassing as described in subsection (1) may also be held vicariously liable for damages to personal or real property committed by the person compensated or remunerated for trespassing.

History: En. Sec. 3, Ch. 522, L. 2021.

Cross-References

Criminal trespass to property, 45-6-203.

82-1-604. Exempt activities. Nothing in 82-1-601 through 82-1-604 may be construed to limit legally permissible activity under 29 U.S.C. 151 through 169, as those sections existed on December 23, 2020.

History: En. Sec. 4, Ch. 522, L. 2021.

CHAPTER 2
MINING GENERALLY

Part 1 — Location and Record of Claims

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82-2-304. Exemption — discovery pits on federal lands.
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82-2-421. Time for payment for ores.
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82-2-423. Statement by purchasers of ore from leased mines.
82-2-424. Copy of statement to lessee.
82-2-425. Shipper — penalty for violation.
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82-2-701. Sand and gravel deposit program — investigation — purpose — prioritization.
82-2-702. Authority to accept gifts, grants, and reimbursements.

Chapter Cross-References

Restrictions on city annexation power, 7-2-4503, 7-2-4608.
Recording of affidavits of work done on mining claims, 7-4-2613.
Classification of property for taxation, Title 15, ch. 6, part 1.
Mines taxation — general property and net proceeds tax, Title 15, ch. 23, part 5.
Coal gross proceeds tax, Title 15, ch. 23, part 7.
Metal mines gross proceeds tax, Title 15, ch. 23, part 8.
Mining license taxes, Title 15, ch. 37.
Bureau of Mines and Geology, 20-25-212.

Mining and oil companies — fraudulent handling of finances, 30-14-701.
Mining partnerships, Title 35, ch. 13.
Chapter not to apply to persons performing any act with respect to prospecting, mining, or drilling, 37-51-103.
Payment of wage provisions extended to those engaged in mining, 39-3-501.
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Property actions relating to mining claims, Title 70, ch. 19, part 2.
Forcible entry defined, 70-27-102.
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City-County Planning Board law not to prevent recovery and use of mineral resources, 76-1-113.
Zoning districts not to prevent recovery of mineral resources, 76-2-209.
State lands — mineral reservations, 77-2-304.
State lands — prospecting permits and mining leases, Title 77, ch. 3, part 1.
State lands — leases and permits for deposits of stone, gravel, sand, and other minerals, Title 77, ch. 3, part 2.
Marking land and mining claims in national forest, 81-4-218.

Part 1
Location and Record of Claims

82-2-101. Manner of locating claim. A person who discovers upon the public domain of the United States, within the state of Montana, a vein, lode, or ledge of rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits or a placer deposit of gold or other deposit of minerals having a commercial value that is subject to entry and patent under the mining laws of the United States may, if qualified by the laws of the United States, locate a mining claim upon the vein, lode, ledge, or deposit in the following manner:

(1) The person shall post conspicuously at the point of discovery a written or printed notice of location containing the name of the claim, the name of the locator or locators, if there is more than one, the date of the location, which must be the date of posting the notice, and the approximate dimensions of the area of the claim intended to be appropriated.

(2) Within 30 days after posting the notice of location, the person shall distinctly mark the location on the ground so that its boundaries can be readily traced. It is prima facie evidence that the location is properly marked if the boundaries are defined by a monument at each corner or angle of the claim, consisting of any one of the following kinds:

(a) a tree at least 8 inches in diameter and blazed on four sides;

(b) a post at least 4 inches square by 4 feet 6 inches in length, set 1 foot in the ground, unless solid rock should occur at a less depth, in which case the post should be set upon the rock and surrounded in all cases by a mound of earth or stone at least 4 feet in diameter by 2 feet in height. A squared stump of the requisite size, surrounded by a mound, must be considered the equivalent of a post and mound.

(c) a stone at least 6 inches square by 18 inches in length, set two-thirds of its length in the ground, with a mound of earth or stone alongside at least 4 feet in diameter by 2 feet in height; or

(d) a boulder at least 3 feet above the natural surface of the ground on the upper side. When other monuments or monuments of lesser dimensions than those described in subsections (2)(a) through (2)(c) are used, it is a question for the jury or for the court where the action is tried without a jury as to whether the location has been marked upon the ground so that its boundaries can be readily traced. Whatever monument is used, it must be marked with the name of the claim and the designation of the corner, either by number or cardinal point.

(3) Within 60 days after posting notice, the locator shall comply with the United States mining laws.

History: En. Sec. 3610, Pol. C. 1895; en. Sec. 1, Ch. 16, L. 1907; Sec. 2283, Rev. C. 1907; re-en. Sec. 7365, R.C.M. 1921; Cal. Civ. C. Sec. 1426; re-en. Sec. 7365, R.C.M. 1935; amd. Sec. 1, Ch. 4, Ex. L. 1971; R.C.M. 1947, 50-701; amd. Sec. 2715, Ch. 56, L. 2009.

Cross-References

Marking land and mining claims in national forest, 81-4-218.
Defective locations good against persons with notice, 82-2-112.
Filing of false mining claims, 82-2-115.

82-2-102. Record of certificate of location. (1) Within 60 days after posting the notice of location, the locator shall record the location in the office of the county clerk of the county in which the mining claim is situated. The record must consist of a certificate of location for each claim containing:

(a) the name of the lode or claim and whether located as a lode or placer claim;

(b) the name of the locator or locators, if there is more than one, together with the post-office address of the locator or locators;

(c) the date of location and the description of the claim, with reference to some natural object or permanent monument, that will identify the claim and the section, township, and range in which the claim is situated by projected survey lines if located in unsurveyed country; and

(d) the directions and distances from the discovery point that describe the claim.

(2) The certificate of location must be verified before an officer authorized to administer oaths by the locator or one of the locators, if there is more than one, or by an authorized agent. In the case of a corporation, the verification may be made by an officer of the corporation or by an authorized agent. When the verification is made by an agent, the fact of the agency must be stated in the affidavit. A verified certificate of location or a certified copy of the certificate is prima facie evidence of all facts properly recited in the certificate. Failure of the locator or locators to record a certificate of location as required in this section creates a prima facie presumption of intent to abandon. However, recordation after the 60-day period but before the ground is located by another renews the location and saves the rights of the original locator. Nothing contained in 82-2-112 affects the prima facie presumption created by this section.

History: En. Sec. 3612, Pol. C. 1895; amd. Sec. 2, p. 141, L. 1901; amd. Sec. 2, Ch. 16, L. 1907; Sec. 2284, Rev. C. 1907; re-en. Sec. 7366, R.C.M. 1921; re-en. Sec. 7366, R.C.M. 1935; amd. Sec. 2, Ch. 4, Ex. L. 1971; amd. Sec. 1, Ch. 428, L. 1973; R.C.M. 1947, 50-702; amd. Sec. 1, Ch. 137, L. 1991; amd. Sec. 2716, Ch. 56, L. 2009.

Cross-References

Clerk's duty to record notice of location, 7-4-2613.
Filing of false mining claims, 82-2-115.

82-2-103. Affidavit of performance of annual work. (1) The owner of a lode or placer claim who performs or causes to be performed the annual work or makes the improvements required by the laws of the United States, as permitted and defined by laws of the United States, in order to prevent the forfeiture of the shall, within 90 days after the expiration of the federal annual assessment work period, file in the office of the county clerk of the county in which the claim or claims are situated the owner's affidavit or an affidavit of the person who performed the work or made the improvements, showing:

(a) the name of the mining claim or claims;

(b) the location of the claim or claims by section, township, and range, by projected survey lines if located in unsurveyed country;

(c) the book and page numbers in which the original or latest amended relocation for each claim is recorded;

(d) the number of days of work done and the character and value of the improvements placed on the claim or the verified report required by United States mining law if geological, geophysical, or geochemical work or labor is being relied upon;

(e) the dates between which the work or improvements were effected;

(f) at whose instance the work was done or the improvements were made; and

(g) the actual amount paid for work and improvements and by whom paid when the work and improvements were not done by the owner.

(2) Annual assessment work may be performed or caused to be performed at one or more points within a group of contiguous claims and may be utilized to satisfy annual assessment work requirements upon the group of contiguous claims. The point or points of work may be performed upon a patented claim. If annual assessment work is performed or caused to be performed at one or more points within a group of contiguous claims, the affidavit of performance of assessment work must be filed for the group of claims. The affidavit, in addition to requirements established

by this section for affidavits of performance of assessment work, must contain a description and location of the work done upon the group at a point or points within the group, the specific names of all the claims in the group for whose benefit the work was performed, and the total cost of the work performed.

(3) If group work is claimed for a group of claims crossing county lines, the affidavit required by this section must be filed for recording within the required time in each of the counties in which the claims are located.

(4) An affidavit of performance of annual assessment work must be verified before some officer authorized to administer oaths by the locator or one of the locators, if there is more than one, or by an authorized agent. In the case of a corporation, the verification may be made by an officer of the corporation or by an authorized agent. When the verification is made by an agent, the fact of the agency must be stated in the affidavit. The affidavit or a certified copy of the affidavit is prima facie evidence of the facts stated in the affidavit. The failure to file the affidavits within the period allowed is prima facie evidence that the labor has not been performed and that the owner of the claim or claims has abandoned and surrendered the claim or claims.

History: En. Sec. 1483, 5th Div. Comp. Stat. 1887; amd. Sec. 3614, Pol. C. 1895; re-en. Sec. 7368, R.C.M. 1921; Cal. Civ. C. Sec. 1426m; re-en. Sec. 7368, R.C.M. 1935; amd. Sec. 3, Ch. 4, Ex. L. 1971; amd. Sec. 1, Ch. 312, L. 1973; amd. Sec. 1, Ch. 112, L. 1974; R.C.M. 1947, 50-704; amd. Sec. 2717, Ch. 56, L. 2009.

Cross-References

Clerk's duty to record affidavit of performance, 7-4-2613.
Clerk's duty to maintain index of affidavits of performance, 7-4-2619.
Fee for recording and indexing affidavits of performance, 7-4-2631.

82-2-104. Millsites. Millsite claims may be located and recorded in the same manner as other claims, except that no discovery or discovery work is required. Where a millsite claim is appurtenant to a mining claim, the certificate of location of such millsite claim shall describe, by appropriate reference, the mining claim to which it is appurtenant.

History: En. Sec. 3, Ch. 16, L. 1907; Sec. 2285, Rev. C. 1907; re-en. Sec. 7369, R.C.M. 1921; re-en. Sec. 7369, R.C.M. 1935; R.C.M. 1947, 50-705.

82-2-105. Relocation of abandoned claim. The relocator of an abandoned or forfeited mining claim may adopt as the relocator's discovery any shaft or other working existing upon the claim at the date of the relocation in which the vein, lode, or deposit is disclosed, but in that shaft or other working, the relocator shall perform the same discovery work that is required in the case of an original location.

History: En. Sec. 4, Ch. 16, L. 1907; Sec. 2286, Rev. C. 1907; re-en. Sec. 7370, R.C.M. 1921; re-en. Sec. 7370, R.C.M. 1935; R.C.M. 1947, 50-706; amd. Sec. 2718, Ch. 56, L. 2009.

82-2-106. Rights of relocator. The rights of a relocator of any relocated abandoned or forfeited mining claim date from the posting of the relocator's notice of location on the claim, and while the relocator is performing the acts required by law to perfect the location, the relocator's rights may not be affected by any reentry or resumption of work by the former locator or claimant.

History: En. Sec. 5, Ch. 16, L. 1907; Sec. 2287, Rev. C. 1907; re-en. Sec. 7371, R.C.M. 1921; re-en. Sec. 7371, R.C.M. 1935; R.C.M. 1947, 50-707; amd. Sec. 2719, Ch. 56, L. 2009.

82-2-107. Amended location. A locator or claimant may at any time amend the location and make any change in the boundaries that does not involve a change in the point of discovery as shown by the discovery shaft by marking the location as amended upon the ground and filing an amended certificate of location conforming to the requirements of an original certificate of location. A defect in a recorded certificate of location may be cured by filing an amended certificate.

History: En. Sec. 6, Ch. 16, L. 1907; Sec. 2288, Rev. C. 1907; re-en. Sec. 7372, R.C.M. 1921; re-en. Sec. 7372, R.C.M. 1935; R.C.M. 1947, 50-708; amd. Sec. 2720, Ch. 56, L. 2009.

Cross-References

Amended locations, 82-2-114.

82-2-108. Relocation by owner. A locator or claimant may at any time relocate the locator's or claimant's own claim for any purpose, except to avoid the performance of annual labor on the claim, and, by the relocation, may change the boundaries of the claim, the point of discovery, or both. However, the relocation must comply in all respects with the requirements of this part as to an original location.

History: **En. Sec. 7, Ch. 16, L. 1907; Sec. 2289, Rev. C. 1907; re-en. Sec. 7373, R.C.M. 1921; re-en. Sec. 7373, R.C.M. 1935; R.C.M. 1947, 50-709; amd. Sec. 2721, Ch. 56, L. 2009.**

82-2-109. Amendment or relocation not waiver of acquired rights. When a locator or claimant amends or relocates the locator's or claimant's own claim, the amendment or relocation may not be construed as a waiver of any right or title acquired by the locator or claimant by virtue of the previous location or record of that location, except as to portions of the previous location that may be omitted from the boundaries of the claim as amended or relocated. As to the portion of ground included both in the original location and the location as amended or relocated, the locator or claimant may rely either upon the original location or the location as amended or relocated or upon both. However, this section may not be construed as permitting the locator or claimant to hold a tract that does not include a valid discovery.

History: **En. Sec. 8, Ch. 16, L. 1907; Sec. 2290, Rev. C. 1907; re-en. Sec. 7374, R.C.M. 1921; re-en. Sec. 7374, R.C.M. 1935; R.C.M. 1947, 50-710; amd. Sec. 2722, Ch. 56, L. 2009.**

82-2-110. Rights of third persons not affected. No amendment or relocation of a mining claim by the locator or claimant thereof shall interfere with any third person's right existing at the time of such amendment or relocation.

History: **En. Sec. 9, Ch. 16, L. 1907; Sec. 2291, Rev. C. 1907; re-en. Sec. 7375, R.C.M. 1921; re-en. Sec. 7375, R.C.M. 1935; R.C.M. 1947, 50-711.**

82-2-111. Validating locations already made. All mining locations made and recorded under the laws of this state heretofore in force that in any respect have failed to conform to the requirements of such laws shall, nevertheless, in the absence of the rights of third persons accruing prior to the passage of this part, be valid if the making and recording of such locations conform to the requirements of this part.

History: **En. Sec. 10, Ch. 16, L. 1907; Sec. 2292, Rev. C. 1907; re-en. Sec. 7376, R.C.M. 1921; re-en. Sec. 7376, R.C.M. 1935; R.C.M. 1947, 50-712.**

82-2-112. Defective locations good against persons with notice. The period of time prescribed by this part for the performance of any act may not be considered mandatory if the act is performed before the rights of third persons have intervened, and a defect in the posted notice or recorded certificate may not be considered material except as against one who has located the same ground or some portion of the same ground in good faith and without notice. Notice to an agent who makes a location on behalf of another must be considered notice to the agent's principal, and notice to one of several coclaimants must be considered notice to all.

History: **En. Sec. 11, Ch. 16, L. 1907; Sec. 2293, Rev. C. 1907; re-en. Sec. 7377, R.C.M. 1921; re-en. Sec. 7377, R.C.M. 1935; R.C.M. 1947, 50-713; amd. Sec. 2723, Ch. 56, L. 2009.**

Cross-References

Record of certificate of location, 82-2-102.

82-2-113. Effect of patent. The issuance of a United States patent for a mining claim is considered conclusive evidence that the requirements of the laws of this state relative to the location and record of such mining claim have been duly complied with. However, if questions of priority are involved, the date of the location shall be an issuable fact when it is claimed to have been prior to the date of the record of the location.

History: **En. Sec. 12, Ch. 16, L. 1907; Sec. 2294, Rev. C. 1907; re-en. Sec. 7378, R.C.M. 1921; re-en. Sec. 7378, R.C.M. 1935; amd. Sec. 10, Ch. 39, L. 1977; R.C.M. 1947, 50-714.**

Cross-References

List of conclusive presumptions, 26-1-601.

82-2-114. Amended locations. If, at any time, the locator of a mining claim or the locator's successors or assigns determine that the original declaratory statement was defective or erroneous, determine that the requirements of law were not complied with, or want to change the boundaries or take in any part of an overlapping claim that has been abandoned or if the original declaratory statement was filed prior to the passage of this law and the locator or the locator's successor's or assigns want the benefit of this part, the locator or the successors or assigns may file an additional or amended declaratory statement subject to the provisions of this part. However, the relocation or filing of the amended or additional declaratory statement may not interfere with the existing rights of others at the time of the relocation or filing of the amended or additional declaratory statement, and the relocation or amended or additional declaratory statement or other record may not preclude the claimant or claimants from proving any title that the claimant may have held under the previous location and notice.

History: **En. Sec. 1, p. 56, L. 1901; re-en. Sec. 2295, Rev. C. 1907; re-en. Sec. 7379, R.C.M. 1921; Cal. Civ. C. Sec. 1426h; re-en. Sec. 7379, R.C.M. 1935; R.C.M. 1947, 50-715; amd. Sec. 2724, Ch. 56, L. 2009.**

Cross-References

Amended location, 82-2-107.

82-2-115. Filing of false mining claims. A person who offers a location certificate for a placer mining claim or lode claim or affidavit of assessment work to be filed in an office of a county clerk of this state on the person's own behalf or for any other person or a person who procures others to do so, knowing that the claim, certificate, or affidavit was not preceded by a proper location of the claim physically upon the ground by the establishment of a proper notice of claim and the designation of the surface boundaries of the claim by substantial posts or monuments as required by the laws of the state, shall be punished by imprisonment in the state prison for not more than 5 years, by a fine of not more than $5,000, or by both.

History: **En. Sec. 1, Ch. 135, L. 1973; R.C.M. 1947, 50-702.1; amd. Sec. 2725, Ch. 56, L. 2009.**

Cross-References

Felony defined, 45-2-101.

Part 2
Rights-of-Way and Eminent Domain

Part Cross-References

General provisions of eminent domain, Title 70, ch. 30.

82-2-201. Right-of-way of owners of mines. The owner of a mining claim held under the laws of the United States by patent or otherwise or under the local laws and customs of the state has a right-of-way over and across the land or mining claim of another, patented or otherwise, as prescribed in this part.

History: **En. Sec. 1, p. 597, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 886, 5th Div. Rev. Stat. 1879; re-en. Sec. 1495, Comp. Stat. 1887; amd. and re-en. Sec. 3630, Pol. C. 1895; re-en. Sec. 2297, Rev. C. 1907; re-en. Sec. 7382, R.C.M. 1921; re-en. Sec. 7382, R.C.M. 1935; R.C.M. 1947, 50-801.**

Cross-References

Location and record of claims, Title 82, ch. 2, part 1.

82-2-202. Road or ditch right-of-way. Whenever a mine or mining claim is so situated that it cannot be conveniently worked without a road thereto or a ditch to convey water thereto or a ditch or a cut to convey the water therefrom or without a flume to carry water and tailings therefrom or without a shaft or tunnel thereto, which road, ditch, cut, flume, or tunnel must necessarily pass over, under, through, or across any lands or mining claims owned or occupied by another, such owner is entitled to a right-of-way for said road, ditch, cut, flume, shaft, or tunnel over, under, through, and across the lands or mining claims belonging to another, upon compliance with the provisions of this part.

History: **En. Sec. 2, p. 597, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 887, 5th Div. Rev. Stat. 1879; re-en. Sec. 1496, Comp. Stat. 1887; amd. and re-en. Sec. 3631, Pol. C. 1895; re-en. Sec. 2298, Rev. C. 1907; re-en. Sec. 7383, R.C.M. 1921; re-en. Sec. 7383, R.C.M. 1935; R.C.M. 1947, 50-802.**

Cross-References

Highways — acquisition of property, Title 60, ch. 4, part 1.
Interference with canal or ditch easements, 70-17-112.
Easements over state lands, Title 77, ch. 2, part 1.

82-2-203. Proceedings to obtain right-of-way. Whenever the owner desires to work a mine or mining claim and it is necessary that the owner have a right-of-way for any of the purposes mentioned in 82-2-201 and 82-2-202 in order to work the mine or mining claim successfully and conveniently and if the right-of-way has not been acquired by agreement between the owner of the mining claim and the owner of the land or claims over, under, across, and upon which the mining claim owner seeks to establish the right-of-way, it is lawful for the mining claim owner to present to the judge of the district court a complaint asking that the right-of-way be granted. The complaint must be verified and contain a particular description of the character and extent of the right sought, a description of the mine or mining claim of the owner, and the mining claim or claims and the land to be affected by the right-of-way, with the names of the occupants or owners of the affected land, and may also set forth any tender or offer.

History: En. Sec. 3, p. 597, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 888, 5th Div. Rev. Stat. 1879; re-en. Sec. 1497, Comp. Stat. 1887; amd. and re-en. Sec. 3632, Pol. C. 1895; re-en. Sec. 2299, Rev. C. 1907; re-en. Sec. 7384, R.C.M. 1921; re-en. Sec. 7384, R.C.M. 1935; R.C.M. 1947, 50-803; amd. Sec. 2726, Ch. 56, L. 2009; amd. Sec. 38, Ch. 55, L. 2015.

Cross-References

Easements over state lands, Title 77, ch. 2, part 1.

82-2-204. Proceedings before the court. Upon the receipt of the complaint and filing thereof with the clerk of the court, the judge must direct a summons to issue to the defendants named in the complaint requiring them to appear before the judge on a day therein named, which must be not less than 10 days from the service thereof, and show cause why such right-of-way should not be allowed. The summons may be served on each of the parties in the manner prescribed by law for serving summons in other actions.

History: En. Sec. 4, p. 598, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 889, 5th Div. Rev. Stat. 1879; re-en. Sec. 1498, Comp. Stat. 1887; amd. and re-en. Sec. 3633, Pol. C. 1895; re-en. Sec. 2300, Rev. C. 1907; re-en. Sec. 7385, R.C.M. 1921; re-en. Sec. 7385, R.C.M. 1935; R.C.M. 1947, 50-804.

82-2-205. Court order and appointment of commissioners. Upon the return of the summons or upon any day to which the hearing is adjourned, the defendants may answer, issue must be joined, and the judge shall hear the allegations and proofs of the respective parties. If, upon the hearing, the judge is satisfied that the claims of the plaintiff may be worked conveniently only by means of the privilege asked for, the judge shall make an order adjudging and awarding to the plaintiff the right-of-way and shall appoint three commissioners who are disinterested persons and residents of the county to assess the damages to the lands or claims affected by the order.

History: En. Sec. 5, p. 598, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 890, 5th Div. Rev. Stat. 1879; re-en. Sec. 1499, Comp. Stat. 1887; amd. and re-en. Sec. 3634, Pol. C. 1895; re-en. Sec. 2301, Rev. C. 1907; re-en. Sec. 7386, R.C.M. 1921; re-en. Sec. 7386, R.C.M. 1935; amd. Sec. 11, Ch. 39, L. 1977; R.C.M. 1947, 50-805; amd. Sec. 2727, Ch. 56, L. 2009.

82-2-206. Commissioners to assess damages. The commissioners must be sworn to faithfully and impartially discharge their duties and must without delay examine the property, lands, and claims and assess the damages resulting from such right-of-way and report the amount to the judge, and if such right-of-way affects the property of more than one person, such report must contain an assessment of damages to each person.

History: En. Sec. 6, p. 598, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 891, 5th Div. Rev. Stat. 1879; re-en. Sec. 1500, Comp. Stat. 1887; amd. and re-en. Sec. 3635, Pol. C. 1895; re-en. Sec. 2302, Rev. C. 1907; re-en. Sec. 7387, R.C.M. 1921; re-en. Sec. 7387, R.C.M. 1935; R.C.M. 1947, 50-806.

Cross-References

Damages, Title 27, ch. 1, part 2.
Measure of damages, Title 27, ch. 1, part 3.
Assessing compensation, 70-30-302.

82-2-207. Power to set aside commissioners' report. For good cause shown, the judge may set aside the report of the commissioners and appoint three other commissioners.

History: En. Sec. 7, p. 599, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 892, 5th Div. Rev. Stat. 1879; re-en. Sec. 1501, Comp. Stat. 1887; amd. and re-en. Sec. 3636, Pol. C. 1895; re-en. Sec. 2303, Rev. C. 1907; re-en. Sec. 7388, R.C.M. 1921; re-en. Sec. 7388, R.C.M. 1935; R.C.M. 1947, 50-807.

Cross-References

Appeal to District Court from assessment of Commissioners, 70-30-304.

82-2-208. Right-of-way to commence upon payment of assessed damages. Upon the payment of the sum assessed as damages and all costs to the persons to whom it is awarded or the payment of the same to the clerk for the use of such person, plaintiff is entitled to the right-of-way and may immediately proceed to occupy the same and to erect thereon such works and structures and make therein such excavations as may be necessary to the use and enjoyment of the right-of-way so awarded.

History: En. Sec. 8, p. 599, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 893, 5th Div. Rev. Stat. 1879; re-en. Sec. 1502, Comp. Stat. 1887; amd. and re-en. Sec. 3637, Pol. C. 1895; re-en. Sec. 2304, Rev. C. 1907; re-en. Sec. 7389, R.C.M. 1921; re-en. Sec. 7389, R.C.M. 1935; R.C.M. 1947, 50-808.

Cross-References
Allowable costs, Title 25, ch. 10, part 2.
Damages, Title 27, ch. 1, part 2.
Measure of damages, Title 27, ch. 1, part 3.

82-2-209. Appeal from assessment of damages. An appeal from the assessment of damages made by the commissioners may be taken to the district court by any party interested at any time within 10 days after the filing of the report of the commissioners. A written notice of appeal must be filed with the clerk and served upon the opposite party.

History: En. Sec. 9, p. 599, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 894, 5th Div. Rev. Stat. 1879; re-en. Sec. 1503, Comp. Stat. 1887; amd. and re-en. Sec. 3638, Pol. C. 1895; re-en. Sec. 2305, Rev. C. 1907; re-en. Sec. 7390, R.C.M. 1921; re-en. Sec. 7390, R.C.M. 1935; R.C.M. 1947, 50-809.

Cross-References
Costs, Title 25, ch. 10.

82-2-210. Trial on appeal and costs. On appeal, the question of the amount of damages may be tried by the court or jury as in other cases. If the appellant recovers damages exceeding the amount awarded by the commissioners, the opposite party must pay the costs of appeal, otherwise the appellant.

History: En. Sec. 10, p. 599, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 895, 5th Div. Rev. Stat. 1879; re-en. Sec. 1504, Comp. Stat. 1887; amd. and re-en. Sec. 3639, Pol. C. 1895; re-en. Sec. 2306, Rev. C. 1907; re-en. Sec. 7391, R.C.M. 1921; re-en. Sec. 7391, R.C.M. 1935; R.C.M. 1947, 50-810.

Cross-References
Trials, Title 25, ch. 7.
Costs, Title 25, ch. 10.

82-2-211. Payment of costs. All costs and expenses of the proceedings under the provisions of this part, except as provided in 82-2-210, must be paid by the plaintiff or party making the application. The judge may, if the right-of-way asked for is denied, allow the opposite party a reasonable counsel fee.

History: En. Sec. 3640, Pol. C. 1895; re-en. Sec. 2307, Rev. C. 1907; re-en. Sec. 7392, R.C.M. 1921; re-en. Sec. 7392, R.C.M. 1935; R.C.M. 1947, 50-811.

Cross-References
Costs, Title 25, ch. 10.

82-2-212. Appeal to supreme court. An appeal to the supreme court may be taken by either party as in other cases.

History: En. Sec. 3641, Pol. C. 1895; re-en. Sec. 2308, Rev. C. 1907; re-en. Sec. 7393, R.C.M. 1921; re-en. Sec. 7393, R.C.M. 1935; R.C.M. 1947, 50-812.

Cross-References
Supreme Court jurisdiction, Title 3, ch. 2, part 2.
Appeal to Supreme Court, Title 25, ch. 12.

82-2-213 through 82-2-220 reserved.

82-2-221. Eminent domain for open-pit mining — purchase of property required. (1) (a) Subject to subsection (1)(b), when the right of eminent domain is exercised pursuant to Title 70, chapter 30, to acquire estates and rights in land for the purpose of open-pit mining of the ores, metals, or minerals owned by the condemnor, the decree must be granted on the condition that the condemnor protects the public in the immediate area by agreeing to purchase all property within 300 yards of the surface tract condemned, including vacant lots.

(b) In order to fall within the protection provided by subsection (1)(a), the owner of land within 300 yards of the surface tract condemned shall serve upon the condemnor and file with the court a written offer stating the amount asked for the property within 30 days from the entry of the court order appointing commissioners in the eminent domain proceeding.

(2) If the condemnor and an owner are unable to agree upon the compensation to be paid for the property, the court, upon petition of either party, may proceed to determine the compensation to be paid for property in the manner prescribed in Title 70, chapters 30 and 31, for ascertaining the value of property taken through the exercise of the right of eminent domain.

History: En. Sec. 1, Ch. 240, L. 1961; amd. Sec. 1, Ch. 304, L. 1973; R.C.M. 1947, 50-813; amd. Sec. 97, Ch. 125, L. 2001.

Cross-References
Open-pit mining of coal not public use for purposes of eminent domain, 70-30-102, 70-30-106.
Prospecting permits and mining leases for state lands, Title 77, ch. 3, part 1.

82-2-222. Construction of alternate facilities. If a mineral owner seeks to condemn streets, roads, alleys, or highways pursuant to Title 70, chapter 30, for the purposes stated in 82-2-221, there must also be attached to the complaint for condemnation a plat or plats showing the alternate facilities to be proposed and paid for by the condemnor. The court, in its final order of condemnation, may order the condemnor to construct reasonable and adequate alternate facilities that it considers appropriate under the circumstances.

History: En. Sec. 2, Ch. 240, L. 1961; R.C.M. 1947, 50-814; amd. Sec. 98, Ch. 125, L. 2001.

82-2-223. Compensation for property. (1) The measure of compensation for the property located within 300 yards of the surfaced tract condemned shall be the fair market value or the value of similar property in a similar area not affected by open-pit mining operations, whichever the owner of the surface property shall elect to receive.

(2) The measure of compensation for a building owned by the city, county, or state shall be the value of the cost of replacing the building in a similar area not affected by open-pit mining operations.

History: En. Sec. 3, Ch. 240, L. 1961; amd. Sec. 2, Ch. 304, L. 1973; R.C.M. 1947, 50-815.

82-2-224. Notice of condemnation — filing of plat. Any party seeking to condemn property for open-pit mining purposes pursuant to Title 70, chapter 30, shall serve written notice on all owners and purchasers under contracts for deed of property within 300 yards of the surface tract sought to be condemned or shall file a plat showing the boundaries of the property sought to be condemned in the office of the county clerk and recorder. The filing of the plat constitutes notice to the owner or owners not personally served with written notice.

History: En. Sec. 4, Ch. 240, L. 1961; amd. Sec. 3, Ch. 304, L. 1973; R.C.M. 1947, 50-816; amd. Sec. 24, Ch. 526, L. 1983; amd. Sec. 99, Ch. 125, L. 2001.

Cross-References

Documents subject to recording by County Clerk, 7-4-2613.
Fees of County Clerk, 7-4-2631.

Part 3
Landowner Notification of Surface Operations

82-2-301. Short title. This part may be referred to as "The Landowner Notification Act".

History: En. Sec. 1, Ch. 335, L. 1971; R.C.M. 1947, 50-1301.

82-2-302. Ascertaining ownership of land. All prospectors for minerals, miners, or other persons contemplating surface disturbance by mechanical equipment other than hand tools on lands within the state of Montana are required to ascertain the ownership and possessory right of any land before performing any such operations causing surface disturbance such as road or trail building or any other work disturbing the surface on such land.

History: En. Sec. 2, Ch. 335, L. 1971; R.C.M. 1947, 50-1302.

82-2-303. Written notice and approval required before commencement of operations. (1) The land or surface of land not owned in fee by such person may not be disturbed in any manner until the owner or manager of the surface of said land and the owner of a possessory right to said land are given notice in writing, accompanied by a map showing the specific locations involved, of such person's intent or desire to enter upon such land, which will sufficiently disclose the plan of work and operations, including contemplated measures for the protection and restoration of the land and waters, to enable the owner or manager of the land and any person holding a possessory right to such land to evaluate the extent of disturbance contemplated and the effectiveness and sufficiency of the protection and restoration measures planned.

(2) Before commencement of any work or operations on any such lands, such person must first obtain from the surface owner of private land specific written approval of the proposed work or operations.

(3) In the case of city, county, state, or federally owned lands, such person must first obtain the authorization or permit, if any, required by the applicable law and the regulations of the governmental agency or board charged by law with the administration or management of the surface of such land.

History: En. Sec. 3, Ch. 335, L. 1971; R.C.M. 1947, 50-1303.

Cross-References
City-County Planning Board not to prevent recovery of mineral resources, 76-1-113.
County zoning, Title 76, ch. 2, part 2.
Municipal zoning, Title 76, ch. 2, part 3.
Prospecting permits and mining leases for state-owned lands, Title 77, ch. 3, part 1.
Nonmetallic mineral leases authorized for state-owned lands, 77-3-201.
Coal leases authorized for state-owned lands, 77-3-301.
Oil and gas leases authorized for state-owned lands, 77-3-401.
Geothermal leases authorized for state-owned lands, 77-4-101.

82-2-304. Exemption — discovery pits on federal lands. Discovery pits which may be required to locate a mining claim on federal lands open to mineral entry, when excavated entirely by hand methods with hand tools, are exempt from the operation of this part.

History: En. Sec. 4, Ch. 335, L. 1971; R.C.M. 1947, 50-1304.

82-2-305. Exemption — operations pursuant to prospecting permits or other agreements. The provisions of this part shall not apply where operations upon land are performed in accordance with the terms of a prospecting permit or a lease covering any mineral interest in said land or other valid agreements authorizing such operations which are in full force and effect.

History: En. Sec. 5, Ch. 335, L. 1971; amd. Sec. 1, Ch. 194, L. 1973; R.C.M. 1947, 50-1305.

Cross-References
Prospecting permits and mining leases for state-owned lands, Title 77, ch. 3, part 1.
Nonmetallic mineral leases authorized for state-owned lands, 77-3-201.
Coal leases authorized for state-owned lands, 77-3-301.
Oil and gas leases authorized for state-owned lands, 77-3-401.
Geothermal leases authorized for state-owned lands, 77-4-101.

82-2-306. Violation — immunity of landowner. Any work done in violation of this part is punishable as a misdemeanor, and each day of violation shall constitute a separate offense. The owner or lessor shall not be liable for injury to any person on either owned or leased land.

History: En. Sec. 6, Ch. 335, L. 1971; R.C.M. 1947, 50-1306.

Cross-References
Person defined, 1-1-201.
Definition of misdemeanor, 45-2-101.
Criminal responsibility of corporations, 45-2-311.
Accountability for conduct of corporation, 45-2-312.
Misdemeanor penalty when no penalty specified, 46-18-212.

Part 4
Assaying of Ore and Payment for Consignments

Part Cross-References
Deceptive business practices, 45-6-318.

82-2-401. Sampling rooms required. A person, association, or corporation engaged in the business of buying or sampling or smelting for hire ores of gold, silver, copper, lead, zinc, iron, or other valuable metal shall maintain a sampling room or house to which the ore shippers or their agents or representatives must have access at all times during the sampling of ores or while the sampling is being carried on and in which must be maintained samples of all ores that the person, association, or corporation may buy or smelt.

History: En. Sec. 1, Ch. 54, L. 1909; re-en. Sec. 3436, R.C.M. 1921; re-en. Sec. 3436, R.C.M. 1935; R.C.M. 1947, 50-201; amd. Sec. 2728, Ch. 56, L. 2009.

82-2-402. Samples of 50 pounds per ton to be retained until settlement. A person, association, or corporation that buys ore upon an agreement to pay for it in an amount dependent upon the metallic contents or that smelts any ore shall retain from the pulp or crushed ore, as the ore is sampled, a quantity of not less than 50 pounds out of each ton of ore. The quantity must be selected regularly and at equal intervals from any lot of ore bought or to be smelted, and the person, association, or corporation shall keep this quantity separate from any other ore or pulp for a period of 30 days or until full settlement is made and accepted by the shipper. Until full settlement is made and accepted, the ore shipper or the shipper's agents or representatives may take any part from the quantity retained for the purpose of sampling or assaying that part.

However, the value of any part taken by the owner or shipper may be deducted from the total value of the ore delivered by the owner or shipper.

History: **En. Sec. 2, Ch. 54, L. 1909; re-en. Sec. 3437, R.C.M. 1921; re-en. Sec. 3437, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1977; R.C.M. 1947, 50-202; amd. Sec. 2729, Ch. 56, L. 2009.**

Cross-References

Authority of Historical Society to preserve samples of minerals, 22-3-107.

82-2-403. Penalty for commingling foreign substances with ore. Any person or persons, corporation, association, or partnership which shall, with intent to defraud, in any manner whatever, introduce any foreign substance into any ore or commingle any foreign substance with any ore intended for sale in any smelter or which any person, association, or corporation shall have undertaken for hire to smelt or into any sample retained for tests or assays, as provided in 82-2-402, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $1,000 or by imprisonment in the county jail for a period of not less than 60 days or more than 12 months or by both such fine and imprisonment.

History: **En. Sec. 3, Ch. 54, L. 1909; amd. Sec. 1, Ch. 44, L. 1921; re-en. Sec. 3438, R.C.M. 1921; re-en. Sec. 3438, R.C.M. 1935; R.C.M. 1947, 50-203.**

Cross-References

Deceptive business practices, 45-6-318.

82-2-404. Umpire assayers — appointment, qualifications, and duties. A person, association, or corporation engaged in the sampling of ores with intent to purchase or smelt them, whether for themselves or as the agent or agents for other purchasers, shall choose an assayer who has operated an assay office or chemical laboratory for at least 1 year. The person, association, or corporation shall submit to the selected assayer all samples of ore over which there is a dispute as to metallic contents or value between the buyer or sampler and the seller of the ore. The chosen assayer shall be known as the umpire for the person, association, or corporation.

History: **En. Sec. 1, Ch. 115, L. 1909; re-en. Sec. 3439, R.C.M. 1921; re-en. Sec. 3439, R.C.M. 1935; amd. Sec. 2, Ch. 39, L. 1977; R.C.M. 1947, 50-204; amd. Sec. 1, Ch. 27, L. 1979.**

82-2-405. Notice of selection. Upon the selection of the umpire, who must be actively engaged in the assaying business in this state, the person, association, or corporation selecting the umpire shall, within 10 days after the selection is made, post a notice of the selection in a conspicuous place within and outside the room or house where the sampling of ore is carried on by the person, association, or corporation.

History: **En. Sec. 2, Ch. 115, L. 1909; re-en. Sec. 3440, R.C.M. 1921; re-en. Sec. 3440, R.C.M. 1935; amd. Sec. 3, Ch. 39, L. 1977; R.C.M. 1947, 50-205; amd. Sec. 2730, Ch. 56, L. 2009.**

82-2-406. Violation — penalty. Every person, association, or corporation engaged in the sampling of ores belonging to others which fails to comply with the provisions of 82-2-404 or 82-2-405 shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or less than $500.

History: **En. Sec. 3, Ch. 115, L. 1909; re-en. Sec. 3441, R.C.M. 1921; re-en. Sec. 3441, R.C.M. 1935; R.C.M. 1947, 50-206.**

Cross-References

Criminal responsibility of corporations, 45-2-311.
Accountability for conduct of corporation, 45-2-312.

82-2-407 through 82-2-420 reserved.

82-2-421. Time for payment for ores. (1) A person, association, company, or corporation engaged within this state in purchasing ore, minerals, or metals from or in smelting, milling, or otherwise reducing or preparing the same for market for any other person or persons, association, company, or corporation shall, within 20 days after any ore, minerals, or metals have arrived at the person's or entity's smelter, mill, reduction works, yards, or other place for receiving ore, minerals, or metals, make full settlement with and payment of the amount due to the consignor or consignors unless restrained or prevented from making the settlement and payment by an order, writ, or process of a court of competent jurisdiction.

(2) The provisions of this section are not applicable to any ore, minerals, or metals received pursuant to an existing written contract at the time of shipment between the consignor or consignors and the person, association, company, or corporation receiving the same when the time for settlement and payment is provided for in the contract.

History: En. Sec. 1, Ch. 37, L. 1911; re-en. Sec. 3442, R.C.M. 1921; re-en. Sec. 3442, R.C.M. 1935; amd. Sec. 1, Ch. 5, L. 1953; R.C.M. 1947, 50-301(part); amd. Sec. 2731, Ch. 56, L. 2009.

Cross-References

Definition of contract, 28-2-101, 30-1-201.

Applicability of Uniform Commercial Code to contracts for sale of minerals, 30-2-105(1), 30-2-107.

82-2-422. Violation — penalty. Any person, association, company, or corporation violating any of the provisions of 82-2-421 shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or less than $500.

History: En. Sec. 2, Ch. 37, L. 1911; re-en. Sec. 3443, R.C.M. 1921; re-en. Sec. 3443, R.C.M. 1935; R.C.M. 1947, 50-302.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

82-2-423. Statement by purchasers of ore from leased mines. A person or corporation buying or treating ores from leased mines or mining claims shall furnish the lessor and the lessee of the mines or mining claims a true and correct copy of the statement of returns of ores from the sale or shipment. The statement shall show both the gross and net proceeds derived from the sale or shipment of ores. Upon shipment of the ores from leased premises, either for sale or treatment, the shipper shall furnish to any sampling works or smelter buying or treating them the names and post-office addresses of the lessor and the lessee interested in that shipment of ores, and within 7 days after receipt of the statement from the sampling works or smelter, the shipper shall make settlement with the lessor and the lessee for the shipment or sale of ores, based upon the statement received by the parties from the sampling works or smelter.

History: En. Sec. 1, Ch. 79, L. 1921; re-en. Sec. 3444, R.C.M. 1921; re-en. Sec. 3444, R.C.M. 1935; amd. Sec. 4, Ch. 39, L. 1977; R.C.M. 1947, 50-303.

82-2-424. Copy of statement to lessee. Sampling works and smelters within this state shall mail a duplicate copy of any statement showing the gross and net proceeds of all ores bought from or treated for lessors of mines to the lessee of the mine or mining claim from which the ores were extracted at the same time the statement is furnished to the lessor of the mine or mining claim or shipper of the ore.

History: En. 3444.1, R.C.M. 1935 by Sec. 1, Ch. 17, L. 1937; amd. Sec. 5, Ch. 39, L. 1977; R.C.M. 1947, 50-304.

82-2-425. Shipper — penalty for violation. A person or corporation who, as the shipper, violates 82-2-423, as amended, is liable to the lessor and the lessee for 10% of the net returns from the shipment or sale of ores referred to in that section, in addition to the value of the interest of the lessor and the lessee in the shipment. This amount may be recovered in an action in any court of competent jurisdiction.

History: En. Sec. 2, Ch. 79, L. 1921; re-en. Sec. 3445, R.C.M. 1921; re-en. Sec. 3445, R.C.M. 1935; amd. Sec. 6, Ch. 39, L. 1977; R.C.M. 1947, 50-305.

82-2-426. Smelters — penalty for violation. Any person or corporation operating any sampling works or smelter within this state who shall violate any of the provisions of 82-2-423 and 82-2-424 shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not less than $50 or more than $100.

History: En. Sec. 3, Ch. 79, L. 1921; re-en. Sec. 3446, R.C.M. 1921; re-en. Sec. 3446, R.C.M. 1935; amd. Sec. 2, Ch. 17, L. 1937; R.C.M. 1947, 50-306.

Cross-References

Person defined, 1-1-201.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Parts 5 and 6 reserved

Part 7
Sand and Gravel Deposit Program

82-2-701. Sand and gravel deposit program — investigation — purpose — prioritization. (1) The Montana bureau of mines and geology shall establish a sand and gravel deposit program for the purpose of investigating sand and gravel deposits in areas of the state where conflicts between development and sand and gravel operations are high.

(2) In prioritizing areas for investigation, the bureau of mines and geology shall consider the largest counties, according to the most recent census data, and counties with the most opencut mining permits and subdivision applications, according to the department of environmental quality.

(3) The bureau of mines and geology may start an investigation when it has sufficient funds to conduct an investigation.

(4) Within 1 year of starting an investigation, the bureau of mines and geology shall present the results of the investigation in the form of maps and text and in accordance with 5-11-210 to:

(a) the counties included in the investigation;
(b) the local government interim committee; and
(c) the environmental quality council.

History: En. Sec. 1, Ch. 276, L. 2009; amd. Sec. 112, Ch. 261, L. 2021.

82-2-702. Authority to accept gifts, grants, and reimbursements. The Montana bureau of mines and geology may accept gifts, grants, and reimbursements to be used for the purposes of 82-2-701.

History: En. Sec. 2, Ch. 276, L. 2009.

CHAPTER 3
COAL MINING
(Repealed)

Part 1 — Coal Conservation (Repealed)

Part 2 — Coal Invoices (Repealed)

Part 1
Coal Conservation
(Repealed)

82-3-101. Repealed. Sec. 21, Ch. 550, L. 1979.
History: En. Sec. 1, Ch. 220, L. 1973; R.C.M. 1947, 50-1401.

82-3-102. Repealed. Sec. 21, Ch. 550, L. 1979.
History: En. Sec. 2, Ch. 220, L. 1973; R.C.M. 1947, 50-1402.

82-3-103. Repealed. Sec. 21, Ch. 550, L. 1979.
History: En. Sec. 3, Ch. 220, L. 1973; R.C.M. 1947, 50-1403.

82-3-104. Repealed. Sec. 21, Ch. 550, L. 1979.
History: En. Sec. 4, Ch. 220, L. 1973; amd. Sec. 15, Ch. 39, L. 1977; amd. Sec. 4, Ch. 352, L. 1977; R.C.M. 1947, 50-1404.

82-3-105. Repealed. Sec. 21, Ch. 550, L. 1979.
History: En. Sec. 5, Ch. 220, L. 1973; R.C.M. 1947, 50-1405.

82-3-106. Repealed. Sec. 21, Ch. 550, L. 1979.
History: En. Sec. 6, Ch. 220, L. 1973; R.C.M. 1947, 50-1406(1).

82-3-107. Repealed. Sec. 21, Ch. 550, L. 1979.
History: En. Sec. 6, Ch. 220, L. 1973; R.C.M. 1947, 50-1406(2).

82-3-108. Repealed. Sec. 21, Ch. 550, L. 1979.
History: En. Sec. 8, Ch. 220, L. 1973; R.C.M. 1947, 50-1408.

82-3-109. Repealed. Sec. 21, Ch. 550, L. 1979.

History: En. Sec. 7, Ch. 220, L. 1973; R.C.M. 1947, 50-1407.

82-3-110. Repealed. Sec. 21, Ch. 550, L. 1979.

History: En. Sec. 10, Ch. 220, L. 1973; R.C.M. 1947, 50-1409.

Part 2
Coal Invoices
(Repealed)

82-3-201. Repealed. Sec. 1, Ch. 24, L. 1997.

History: En. Sec. 1, Ch. 104, L. 1927; re-en. Sec. 3546.1, R.C.M. 1935; R.C.M. 1947, 50-601.

82-3-202. Repealed. Sec. 1, Ch. 24, L. 1997.

History: En. Sec. 2, Ch. 104, L. 1927; re-en. Sec. 3546.2, R.C.M. 1935; R.C.M. 1947, 50-602.

82-3-203. Repealed. Sec. 1, Ch. 24, L. 1997.

History: En. Sec. 4, Ch. 104, L. 1927; re-en. Sec. 3546.4, R.C.M. 1935; amd. Sec. 117, Ch. 431, L. 1975; R.C.M. 1947, 50-604; amd. Sec. 2, Ch. 274, L. 1981.

82-3-204. Repealed. Sec. 1, Ch. 24, L. 1997.

History: En. Sec. 6, Ch. 104, L. 1927; re-en. Sec. 3546.6, R.C.M. 1935; amd. Sec. 118, Ch. 431, L. 1975; R.C.M. 1947, 50-606; amd. Sec. 2, Ch. 274, L. 1981.

82-3-205. Repealed. Sec. 1, Ch. 24, L. 1997.

History: En. Sec. 5, Ch. 104, L. 1927; re-en. Sec. 3546.5, R.C.M. 1935; R.C.M. 1947, 50-605; amd. Sec. 80, Ch. 10, L. 1993.

CHAPTER 4
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Chapter Cross-References

Inalienable rights, Art. II, sec. 3, Mont. Const.
Environment — protection and improvement, Art. IX, sec. 1, Mont. Const.
Reclamation required, Art. IX, sec. 2, Mont. Const.
Wage protection for certain employees of mineral and oil industry, Title 39, ch. 3, part 5.
Hours of labor — hoisting engineers, 39-4-101.
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Strip mining defined — hours of labor, 39-4-104.
Hours of labor for state and municipal governments, mines, mills, and smelters, 39-4-107.
Mining wastes — applicability of solid waste laws, 75-10-103, 75-10-203.
Montana Major Facility Siting Act, Title 75, ch. 20.
Master plans of city providing for conservation of mineral resources, 76-1-601.
Zoning district law not to prevent recovery of mineral resources, 76-2-209.
Mining wastes — applicability of pesticide laws, 80-8-110.
Hard-rock mining impact, Title 90, ch. 6, part 3.

Part 1
Strip and Underground Mine Siting

82-4-101. Short title. This part shall be known and may be cited as "The Strip and Underground Mine Siting Act".

History: En. 50-1601 by Sec. 1, Ch. 280, L. 1974; amd. Sec. 1, Ch. 441, L. 1975; R.C.M. 1947, 50-1601.

82-4-102. Intent — findings — policy and purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Strip and Underground Mine Siting Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the policy of this state to provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(3) It is the purpose of this part:

(a) to vest in the department the authority to adopt rules and to review new strip-mine and new underground-mine site locations and reclamation plans and either approve or disapprove those locations and plans and to exercise general administration and enforcement of this part;

(b) to satisfy the requirement of Article IX, section 2, of the constitution of this state that all lands disturbed by the taking of natural resources be reclaimed; and

(c) to ensure that adequate information is available on areas proposed for strip mining or underground mining so that mining and reclamation plans may be properly formulated to accommodate areas that are suitable for strip mining or underground mining.

(4) This part is an exercise of the general police power to provide for the health and welfare of the people."

History: En. 50-1602 by Sec. 2, Ch. 280, L. 1974; amd. Sec. 2, Ch. 441, L. 1975; R.C.M. 1947, 50-1602; amd. Sec. 360, Ch. 418, L. 1995; amd. Sec. 27, Ch. 361, L. 2003; amd. Sec. 82, Ch. 324, L. 2021.

Cross-References

Legislature to provide for protection and improvement of environment, Art. IX, sec. 1, Mont. Const.

82-4-103. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Mineral" means mineral as defined in 82-4-203.

(4) "New mine" means a strip- or underground-mining operation proposed for an area of land that the department determines, because of distance from an existing strip-mine or underground-mine operation or their respective facilities or because of important differences in topography, soils, wildlife, geologic structure, aquifers, or vegetation from an existing strip-mine or underground-mine operation, does not constitute an expansion of an existing operation.

(5) "Operation" means all of the premises, facilities, railroad loops, roads, power lines, and equipment used in the process of producing and removing mineral from a designated strip-mine or underground-mine area.

(6) "Operator" means a person who intends to operate a new strip mine or new underground mine involving the removal of more than 10,000 cubic yards of mineral or overburden.

(7) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state.

(8) "Preparatory work" means all onsite disturbances, excluding prospecting, associated with the initiation of a new strip mine or underground mine, including but not limited to the construction of railroad spurs or loops, buildings to house mining operations, roads, storage and train load-out facilities, transmission lines, erection of draglines and loading shovels, and other associated facilities.

(9) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(10) "Underground mining" means any part of the process that is followed in the production of a mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata.

History: En. 50-1603 by Sec. 3, Ch. 280, L. 1974; amd. Sec. 3, Ch. 441, L. 1975; R.C.M. 1947, 50-1603; amd. Sec. 191, Ch. 575, L. 1981; amd. Sec. 361, Ch. 418, L. 1995.

82-4-104. Application. The provisions of this part shall not apply where any preparatory work was conducted prior to January 1, 1974, or for which contracts for preparatory work or the sale of Montana coal from a new strip mine by an operator holding a valid permit under 82-4-221 were in existence and proven specific notice thereof given to the department prior to January 1, 1974.

History: En. 50-1617 by Sec. 17, Ch. 280, L. 1974; R.C.M. 1947, 50-1617.

82-4-105 through 82-4-110 reserved.

82-4-111. Repealed. Sec. 111, Ch. 324, L. 2021.

History: En. 50-1604 by Sec. 4, Ch. 280, L. 1974; amd. Sec. 4, Ch. 441, L. 1975; R.C.M. 1947, 50-1604; amd. Sec. 362, Ch. 418, L. 1995.

82-4-112. Administration. (1) The department shall:

(a) adopt, after an opportunity for a hearing, general rules pertaining to new strip mines and to new underground mines and preparatory work to accomplish the purposes of this part, rules regarding filing of reports, issuance of permits, and other matters of procedure and administration;

(b) exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

(c) issue orders requiring operators to adopt remedial measures necessary to comply with this part and rules adopted under this part;

(d) order the suspension of any permit for failure to comply with this part, any rule adopted under this part, or a permit issued pursuant to this part;

(e) issue an order revoking a permit when the requirements set forth by a notice of violation, order of suspension, or order requiring remedial measures have not been complied with according to the terms in the notice or order;

(f) order the halting of any operation that is started without first having obtained a permit as required by this part;

(g) conduct investigations and inspections necessary to ensure compliance with this part; and

(h) encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to new strip mines, new underground mines, and reclamation of lands and waters affected by preparatory work.

(2) The board shall conduct hearings under this part.

History: En. 50-1605 by Sec. 5, Ch. 280, L. 1974; amd. Sec. 5, Ch. 441, L. 1975; R.C.M. 1947, 50-1605; amd. Sec. 363, Ch. 418, L. 1995; amd. Sec. 6, Ch. 79, L. 2001; amd. Sec. 83, Ch. 324, L. 2021.

Cross-References

Adoption of rules by administrative agencies, Title 2, ch. 4, part 3.
Hearings in contested cases, Title 2, ch. 4, part 6.
Suspension and revocation of permits by Department, 82-4-129.
Hearings subject to Montana Administrative Procedure Act, 82-4-130.
Mandamus to compel enforcement, 82-4-142.

82-4-113. Receipts paid into general fund. Except for bond forfeiture moneys, all fees, penalties, and other moneys available or paid to the department under the provisions of this part shall be placed in the state treasury and credited to the general fund.

History: En. 50-1610 by Sec. 10, Ch. 280, L. 1974; amd. Sec. 10, Ch. 441, L. 1975; R.C.M. 1947, 50-1610; amd. Sec. 1, Ch. 31, L. 1981.

Cross-References

Expenditure only upon legislative appropriation, Art. VIII, sec. 14, Mont. Const.; 17-8-101.

82-4-114 through 82-4-120 reserved.

82-4-121. Permit required. No person may commence preparatory work until the operator shall have first obtained from the department a mine-site location permit for a new strip mine or a new underground mine or a permit under part 2 of this chapter, if the application for such permit includes an appropriate long-range mining plan acceptable to the department.

History: En. 50-1606 by Sec. 6, Ch. 280, L. 1974; amd. Sec. 6, Ch. 441, L. 1975; R.C.M. 1947, 50-1606.

Cross-References

Landowner notification of surface operations, Title 82, ch. 2, part 3.

82-4-122. Application and approval of permit. (1) A person desiring a mine-site location permit shall file with the department an application that must contain a reclamation plan for any preparatory work and any other information the department considers necessary to determine if the proposed area to be affected by the operation is appropriate for the location of a new strip mine or a new underground mine. The department may require any information included in but not limited to an application for a strip-mining permit or underground-mining permit as required by part 2 of this chapter.

(2) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall notify the applicant within 365 days of receipt of a complete application if the proposed site is an acceptable location for development of a new strip mine or a new underground mine. If the site is approved, the department shall issue the applicant a mine-site location permit. If the location is not approved, the department shall notify the applicant in writing, setting forth reasons why the location is not acceptable. The department shall also notify the applicant within 365 days of receipt of a complete application whether the proposed reclamation plan is or is not acceptable. If the plan is not acceptable, the department shall set forth the reasons for nonacceptance of the plan. It may propose modifications, delete areas, or reject the entire plan.

History: En. 50-1607 by Sec. 7, Ch. 280, L. 1974; amd. Sec. 7, Ch. 441, L. 1975; R.C.M. 1947, 50-1607(1), (3); amd. Sec. 10, Ch. 299, L. 2001; amd. Sec. 13, Ch. 337, L. 2005.

Cross-References

Duration of lease when lands described in mine-site location permit, 77-3-314.
Contents of application for strip-mine permit, 82-4-222.

82-4-123. Permit fee and surety bond. A fee of $50 shall be paid before the mine-site location permit required in this part may be issued. The operator shall also file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the department of not less than $200 or more than $10,000 for each acre or fraction thereof of the area of land to be disturbed by preparatory work, with a minimum bond of $5,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the department. In determining the amount of the bond within the above limits, the department shall take into consideration the character and nature of the surface and subsurface disturbances, the future suitable use of the land involved, and the cost of removing or burying facilities, subsidence stabilization, water controls, backfilling, grading, topsoiling, and reclamation to be required. Notwithstanding the above limits, the bond may not be less than the total estimated cost to the state of completing the work described in the reclamation plan.

History: **En. 50-1607 by Sec. 7, Ch. 280, L. 1974; amd. Sec. 7, Ch. 441, L. 1975; R.C.M. 1947, 50-1607(4); amd. Sec. 364, Ch. 418, L. 1995; amd. Sec. 84, Ch. 324, L. 2021.**

Cross-References

Suretyship, Title 28, ch. 11, part 4.

82-4-124. Permit — authority under and renewal. A mine-site location permit shall authorize the applicant to engage in preparatory work upon the area described in the application and designated in the permit for a period of 1 year from the date of issuance and is renewable until the applicant has applied for and received a strip-mining or underground-mining permit in accordance with part 2 of this chapter.

History: **En. 50-1607 by Sec. 7, Ch. 280, L. 1974; amd. Sec. 7, Ch. 441, L. 1975; R.C.M. 1947, 50-1607(2).**

82-4-125. Refusal of permit. (1) The department may not issue a permit under this part if it finds that a new strip mine or a new underground mine is not consistent with the purposes and policies of this part.

(2) The department shall not approve a new strip-mining site, a new underground-mining site, or preparatory worksite for any areas of land or water included in the application if the department determines that the area could not be approved under the criteria specified in 82-4-227.

(3) The department shall not issue a permit under this part if a proposed reclamation plan does not meet the requirements of part 2 of this chapter.

History: **En. 50-1608 by Sec. 8, Ch. 280, L. 1974; amd. Sec. 8, Ch. 441, L. 1975; R.C.M. 1947, 50-1608.**

Cross-References

Policy and purpose of part, 82-4-102.

82-4-126. When information may be used to meet strip-mining or underground-mining permit requirements. The department may choose to accept information submitted under this part to the extent it is applicable and relevant as satisfying the requirements of part 2 of this chapter.

History: **En. 50-1614 by Sec. 14, Ch. 280, L. 1974; amd. Sec. 11, Ch. 441, L. 1975; R.C.M. 1947, 50-1614.**

Cross-References

Contents of application for strip-mine permit, 82-4-222.

82-4-127. Effect of siting permit on subsequent mining permits. When the department has sufficient information to approve or disapprove a mine-site location permit application on either the entire area being considered for a mine-site location permit or a portion of the area on the grounds listed in 82-4-227(2) and (7), the department shall provide written notification to the operator that the department has enough information to approve or disapprove the application. The decision is binding on the department with regard to strip-mining or underground-mining permit applications as specified in part 2 of this chapter unless:

(1) new information is submitted or obtained in compliance with part 2 of this chapter that indicates a situation not existing or known at the time of the issuance of a permit under this part;

(2) an application under this part misrepresented information related to the criteria;

(3) a situation, which was not in existence at the time of the issuance of a permit under this part, develops because of strip mining or underground mining operations.

History: **En. 50-1616 by Sec. 16, Ch. 280, L. 1974; amd. Sec. 13, Ch. 441, L. 1975; R.C.M. 1947, 50-1616; amd. Sec. 68, Ch. 44, L. 2007.**

82-4-128. Termination of permit. A mine-site location permit granted by the department in accordance with the provisions of this part shall remain in full force and effect until the provisions of the permit are complied with and the bond is released, except that those areas of land covered by a mine-site location permit for which a strip-mining or an underground-mining permit is granted pursuant to the provisions of part 2 of this chapter shall be released from the terms and provisions of the mine-site location permit.

History: **En. 50-1615 by Sec. 15, Ch. 280, L. 1974; amd. Sec. 12, Ch. 441, L. 1975; R.C.M. 1947, 50-1615.**

82-4-129. Noncompliance — suspension of permits. (1) If any of the requirements of this part or rules or orders of the department have not been complied with within the time limits set by the department or by this part, the department shall serve a notice of noncompliance on the operator or, when necessary, the director of the department shall order the suspension of a permit. The notice or order must be handed to the operator in person or served by certified mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension must specify in what respects the operator has failed to comply with this part or the rules or orders of the department and the board. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set in the notice or order, the permit may be revoked by order of the board and the performance bond forfeited to the department.

(2) Any additional strip-mining or underground-mining or mine-site location permits held by an operator whose mine-site location permit has been revoked must be suspended, and the operator is not eligible to receive another permit or to have the suspended permits reinstated until the operator has complied with all the requirements of this part with respect to previous permits issued to the operator. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the department finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this part.

History: En. 50-1609 by Sec. 9, Ch. 280, L. 1974; amd. Sec. 9, Ch. 441, L. 1975; R.C.M. 1947, 50-1609; amd. Sec. 365, Ch. 418, L. 1995; amd. Sec. 85, Ch. 324, L. 2021.

Cross-References

Hearings in contested cases, Title 2, ch. 4, part 6.
Reclamation by Board, 82-4-239, 82-4-240.

82-4-130. Procedure for hearings. (1) A person aggrieved by a final decision of the department under this part may request a hearing before the board by submitting a written request stating the reason for the request within 30 days after the department's decision.

(2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this part.

History: En. 50-1613 by Sec. 13, Ch. 280, L. 1974; R.C.M. 1947, 50-1613; amd. Sec. 7, Ch. 79, L. 2001.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

82-4-131 through 82-4-140 reserved.

82-4-141. Violation — penalty. (1) A person or operator who violates any of the provisions of this part or rules or orders adopted under this part shall pay a civil penalty of not less than $100 or more than $1,000 for the violation and an additional civil penalty of not less than $100 or more than $1,000 for each day during which a violation continues and may be enjoined from continuing the violations as provided in this section. These penalties are recoverable in an action brought by the department in the district court of the first judicial district, Lewis and Clark County, or in the district court having jurisdiction of the defendant.

(2) The department may bring an action for a restraining order, temporary injunction, or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.

(3) A person who purposely or knowingly violates any of the provisions of this part or any determination or order adopted under this part that has become final is guilty of a misdemeanor and shall be fined not less than $500 and not more than $5,000. Each day on which a violation occurs constitutes a separate offense.

(4) Penalties assessed under this section must be determined in accordance with the penalty factors in 82-4-1001.

History: En. 50-1611 by Sec. 11, Ch. 280, L. 1974; R.C.M. 1947, 50-1611; amd. Sec. 366, Ch. 418, L. 1995; amd. Sec. 24, Ch. 487, L. 2005.

Cross-References

Injunctions, Title 27, ch. 19.
Criminal responsibility of corporations, 45-2-311.
Accountability for conduct of corporation, 45-2-312.
Disposition of fines and forfeitures, 46-18-603.
Person defined, 82-4-103.
Penalties, fees, and interest, Title 82, ch. 4, part 10.

82-4-142. Mandamus to compel enforcement. (1) A resident of this state who has knowledge that a requirement of this part or a rule adopted under this part is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that must state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed in 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the county in which the land is located. If the court finds that a requirement of this part or a rule adopted under this part is not being enforced, it shall order the public officer or employee whose duty it is to enforce the requirement or rule to perform the duties. If the officer or employee fails to do so, the public officer or employee must be held in contempt of court and is subject to the penalties provided by law.

History: En. 50-1612 by Sec. 12, Ch. 280, L. 1974; R.C.M. 1947, 50-1612; amd. Sec. 2, Ch. 201, L. 1979; amd. Sec. 2732, Ch. 56, L. 2009; amd. Sec. 46, Ch. 535, L. 2021.

Cross-References

Knowingly defined, 1-1-204, 45-2-101.
Rules for determining residency, 1-1-215.
Contempts, Title 3, ch. 1, part 5.
Mandamus, Title 27, ch. 26.

Part 2
Coal and Uranium Mine Reclamation

Part Cross-References

Reclamation required, Art. IX, sec. 2, Mont. Const.
Severance tax on coal — trust fund, Art. IX, sec. 5, Mont. Const.
State equalization aid — severance tax on coal as revenue, 20-9-343.
Safety in coal mines, Title 50, ch. 73.
Unreclaimed land subject to eminent domain, 70-30-102.
Eminent domain — policy on surface mining or open-pit mining of coal, 70-30-102, 70-30-106.
Legislative approval of siting of uranium conversion and enrichment facilities — conditions, 75-20-206.
State lands — coal mining leases and permits, Title 77, ch. 3, part 3.
Landowner notification of surface operations, Title 82, ch. 2, part 3.
Strip- and underground-mine siting, Title 82, ch. 4, part 1.
Planning and abatement of community impact caused by coal resources development, Title 90, ch. 6, part 2.
Executive and legislative agencies to assist tribes in coal development, 90-11-102.

82-4-201. Short title. This part shall be known and may be cited as "The Montana Strip and Underground Mine Reclamation Act".

History: En. Sec. 1, Ch. 325, L. 1973; amd. Sec. 14, Ch. 441, L. 1975; R.C.M. 1947, 50-1034.

82-4-202. Intent — policy — findings. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Montana Strip and Underground Mine Reclamation Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the declared policy of this state and its people to:

(a) maintain and improve the state's clean and healthful environment for present and future generations;

(b) protect its environmental life-support system from degradation;

(c) prevent unreasonable degradation of its natural resources;

(d) restore, enhance, and preserve its scenic, historic, archaeologic, scientific, cultural, and recreational sites;

(e) demand effective reclamation of all lands disturbed by the taking of natural resources and maintain state administration of the reclamation program;

(f) require the legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards, especially as to reclamation of disturbed lands, in order to achieve the objectives enumerated in this subsection (2); and

(g) provide for the orderly development of coal resources through strip or underground mining to ensure the wise use of these resources and prevent the failure to conserve coal.

(3) The legislature finds and declares that:

(a) in order to achieve the policy objectives enumerated in subsection (2), promote the health and welfare of the people, control erosion and pollution, protect domestic stock and wildlife, preserve agricultural and recreational productivity, save cultural, historic, and aesthetic values, and ensure a long-range dependable tax base, it is reasonably necessary to require that:

(i) all strip-mining and underground-mining operations be limited to those for which 5-year permits are granted;

(ii) a permit not be issued until the operator presents a comprehensive plan for reclamation and restoration and a coal conservation plan, together with an adequate performance bond, and the plan is approved;

(iii) certain other things must be done, certain remedies must be available, and certain lands because of their unique or unusual characteristics may not be strip-mined or underground-mined under any circumstances; and

(iv) the department be given authority to administer and enforce a reclamation program that complies with Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977, as amended;

(b) this part is an exercise of the authority granted in the Montana constitution and, in particular, a response to the mandate expressed in Article IX of the constitution and that this part is also an exercise of the general police power to provide for the health and welfare of the people;

(c) coal mining alters the character of soils and overburden materials and that duplication of premining topography, soils, and vegetation composition is not practicable; and

(d) standards for successful reclamation must be well-defined and consistent so that mine operators can reclaim lands disturbed by mining with confidence that the release of performance bonds can be achieved.

History: En. Sec. 2, Ch. 325, L. 1973; amd. Sec. 15, Ch. 441, L. 1975; R.C.M. 1947, 50-1035; amd. Sec. 1, Ch. 550, L. 1979; amd. Sec. 1, Ch. 204, L. 2003; amd. Sec. 28, Ch. 361, L. 2003.

Cross-References

Inalienable rights, Art. II, sec. 3, Mont. Const.

Environment — protection and improvement, Art. IX, sec. 1, Mont. Const.

82-4-203. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Abandoned" means an operation in which a mineral is not being produced and that the department determines will not continue or resume operation.

(2) "Adjacent area" means the area outside the permit area where a resource or resources, determined in the context in which the term is used, are or could reasonably be expected to be adversely affected by proposed mining operations, including probable impacts from underground workings.

(3) "Affected drainage basin" means an area of land where surface water and ground water quality and quantity are affected by mining activities and where they drain to a common point.

(4) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities.

(b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion and deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(5) "Amendment" means a change in the mine or reclamation plan that increases the operation's permitted boundaries. The term includes major revisions but does not include incidental boundary revisions or minor revisions.

(6) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing

or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so that:

(a) the reclaimed terrain closely resembles the general surface configuration if it is comparable to the premine terrain. For example, if the area was basically level or gently rolling before mining, it should retain these features after mining, recognizing that rolls and dips need not be restored to their original locations and that level areas may be increased.

(b) the reclaimed area blends with and complements the drainage pattern of the surrounding area so that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an unobstructed and controlled manner;

(c) postmining drainage basins may differ in size, location, configuration, orientation, and density of ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected; and

(d) the reclaimed surface configuration is appropriate for the postmining land use.

(7) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities that permit or have the potential to permit economic development as a water source.

(8) (a) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(b) The term includes:

(i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;

(ii) lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;

(iii) processing facilities at or near the mine site or other mine-associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining; and

(iv) all activities necessary and incident to the reclamation of the mining operations.

(9) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

(10) "Board" means the board of environmental review provided for in 2-15-3502.

(11) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation and includes plans for the removal and use of minable and marketable coal located within the area planned to be mined.

(12) (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation.

(b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.

(13) "Coal preparation plant" means a commercial facility where coal is subject to coal preparation. The term includes commercial facilities associated with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

(14) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance are made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(15) "Cropland" means land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

(16) "Degree" means a measurement from the horizontal. In each case, the measurement is subject to a tolerance of 5% error.

(17) "Department" means the department of environmental quality provided for in 2-15-3501.

(18) "Developed water resources" means land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

(19) "Ephemeral drainageway" means a drainageway that flows only in response to precipitation in the immediate watershed or in response to the melting of snow or ice and is always above the local water table.

(20) "Failure to conserve coal" means the nonremoval or nonuse of minable and marketable coal by an operation. However, the nonremoval or nonuse of minable and marketable coal that occurs because of compliance with reclamation standards established by the department is not considered failure to conserve coal.

(21) "Fill bench" means that portion of a bench or table that is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

(22) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

(23) "Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

(24) "Grazing land" means land used for grasslands and forest lands where the indigenous vegetation is actively managed for livestock grazing or browsing or occasional hay production.

(25) "Higher or better uses" means postmining land uses that have a higher economic value or noneconomic benefit to the landowner or the community than the premining land uses.

(26) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake, or reservoir, and encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground water and surface water storage.

(27) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for abatement.

(28) "Incidental boundary revision" means a change in the permit boundary necessary for reasons unforeseen in the original permit application that is small in relation to the original or amended permit area with insignificant impacts relative to the entire operation.

(29) "Industrial or commercial" means land used for:

(a) extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.

(b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(30) (a) "In situ coal gasification" means a method of in-place coal mining where limited quantities of overburden are disturbed to install a conduit or well and coal is mined by injecting or recovering a liquid, solid, sludge, or gas that causes the leaching, dissolution, gasification, liquefaction, or extraction of the coal.

(b) In situ coal gasification does not include the storage of carbon dioxide in a geologic storage reservoir, the primary or enhanced recovery of naturally occurring oil and gas, or any related process regulated by the board of oil and gas conservation pursuant to Title 82, chapter 11.

(31) "Intermittent stream" means a stream or reach of a stream that is below the water table for at least some part of the year and that obtains its flow from both ground water discharge and surface runoff.

(32) "Land use" means specific uses or management-related activities, rather than the vegetative cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the land use. Land use categories include cropland, developed water resources, fish and wildlife

habitat, forestry, grazing land, industrial or commercial, pastureland, land occasionally cut for hay, recreation, or residential.

(33) "Major revision" means a change in the mining or reclamation plan that:

(a) significantly changes the postmining drainage plan, the overall postmining land use, or the bonding level of the permitted area; or

(b) adversely affects the reclaimability of the area or the hydrologic balance on or off the permitted area.

(34) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(35) "Material damage" means:

(a) with respect to the hydrologic balance outside the permit area, a quantifiable adverse impact from surface coal mining and reclamation operations on the quality or quantity of surface water or ground water that precludes an existing or reasonably foreseeable use of surface water or ground water outside the permit area. A quantifiable adverse impact is an effect that can be quantified and measured to a significant degree of confidence. Existing or reasonably foreseeable uses of surface water or ground water are those beneficial uses recognized in the classification of state waters pursuant to Title 75, chapter 5, part 3.

(b) with respect to an alluvial valley floor, degradation or reduction by coal mining and reclamation operations of the water quality or quantity supplied to the alluvial valley floor that significantly decreases the capability of the alluvial valley floor to support agricultural activities; and

(c) with respect to subsidence caused by underground coal mining:

(i) a functional impairment of surface lands, features, structures, or facilities;

(ii) a physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(iii) a significant change in the condition, appearance, or utility of a structure or facility from its presubsidence condition.

(36) "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

(37) "Minable coal" means that coal that can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

(38) "Mineral" means coal and uranium.

(39) "Minor revision" means a change to the mining or reclamation plan that increases the area of land affected by mining activities within a permitted area by a total of less than 320 acres from the amount initially approved and does not significantly increase the impact of the permitted disturbance. The term includes expansion into an adjacent permitted area provided the expansion does not significantly increase the impact from either permitted area.

(40) "Operation" means:

(a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area, including coal preparation plants; and

(b) all activities, including excavation incident to operations, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

(41) "Operator" means a person engaged in:

(a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden;

(b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location;

(c) operating a coal preparation plant; or

(d) uranium mining using in situ methods.

(42) "Overburden" means:

(a) all of the earth and other materials that lie above a natural mineral deposit; and

(b) the earth and other material after removal from their natural state in the process of mining.

(43) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(44) "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.

(45) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

(46) "Prime farmland" means land that:

(a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the Federal Register; and

(b) historically has been used for intensive agricultural purposes.

(47) "Prospecting" means:

(a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, or geophysical or other techniques necessary to determine:

(i) the quality and quantity of overburden in an area; or

(ii) the location, quantity, or quality of a mineral deposit; or

(b) the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.

(48) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work conducted on lands affected by strip mining or underground mining under a plan approved by the department to make those lands capable of supporting the uses that those lands were capable of supporting prior to any mining or to higher or better uses.

(49) "Recovery fluid" means any material that flows or moves, whether in semisolid, liquid, sludge, gas, or some other form or state, used to dissolve, leach, gasify, or extract coal.

(50) "Recreation" means land used for public or private leisure-time activities, including developed recreation facilities, such as parks, camps, and amusement areas, as well as areas for less intensive uses, such as hiking, canoeing, and other undeveloped recreational uses.

(51) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the department. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

(52) "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

(53) "Residential" means land used for single- and multiple-family housing, mobile home parks, or other residential lodgings.

(54) "Restore" or "restoration" means reestablishment after mining and reclamation of the land use that existed prior to mining or to higher or better uses.

(55) (a) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(b) For the purposes of this part only, strip mining also includes remining and coal preparation.

(c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

(56) "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

(57) "Surface owner" means:

(a) a person who holds legal or equitable title to the land surface;

(b) a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of income from farming or ranching operations;

(c) the state of Montana when the state owns the surface; or

(d) the appropriate federal land management agency when the United States government owns the surface.

(58) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of the earth, that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

(59) "Underground mining" means any part of the process that is followed in the production of a mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata. The term includes mining by in situ methods.

(60) "Unwarranted failure to comply" means:

(a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement of this part because of indifference, lack of diligence, or lack of reasonable care; or

(b) the failure to abate any violation of a permit or of this part because of indifference, lack of diligence, or lack of reasonable care.

(61) "Waiver" means a document that demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

(62) "Wildlife habitat enhancement feature" means a component of the reclaimed landscape, established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species, including but not limited to tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops, microtopography, or raptor perches.

(63) "Written consent" means a statement that is executed by the owner of the surface estate and that is written on a form approved by the department to demonstrate that the owner consents to entry of an operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining and reclamation operations that fully comply with the terms and requirements of this part. *(2025 amendments to definition of material damage void on occurrence of contingency—sec. 4, Ch. 464, L. 2025—see compiler's comment; the definitions of amendment, incidental boundary revision, major revision, and minor revision terminate on occurrence of contingency—sec. 6, Ch. 524, L. 2023.)*

History: En. Sec. 3, Ch. 325, L. 1973; amd. Sec. 1, Ch. 209, L. 1974; amd. Sec. 1, Ch. 235, L. 1974; amd. Sec. 16, Ch. 441, L. 1975; amd. Sec. 1, Ch. 538, L. 1975; R.C.M. 1947, 50-1036; amd. Sec. 2, Ch. 550, L. 1979; amd. Sec. 1, Ch. 437, L. 1981; amd. Sec. 1, Ch. 70, L. 1987; amd. Sec. 1, Ch. 147, L. 1991; amd. Sec. 1, Ch. 225, L. 1993; amd. Sec. 1, Ch. 159, L. 1995; amd. Sec. 367, Ch. 418, L. 1995; amd. Sec. 2, Ch. 196, L. 1997; amd. Sec. 2, Ch. 204, L. 2003; amd. Sec. 3, Ch. 398, L. 2011; amd. Sec. 1, Ch. 408, L. 2011; amd. Sec. 1, Ch. 337, L. 2021; amd. Sec. 2, Ch. 524, L. 2023; amd. Sec. 2, Ch. 631, L. 2023; amd. Sec. 1, Ch. 464, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 464, L. 2025. Amendment effective May 5, 2025, and void on occurrence of contingency.

Retroactive Applicability: Section 6, Ch. 464, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to actions for judicial review or other causes of action challenging the issuance of a permit petition for review, amendment, license, arbitration, action, certificate, or inspection that are pending but not yet decided on or after [the effective date of this act]." Effective May 5, 2025.

Contingent Voidness: Sec. 4, Ch. 464, L. 2025, provided: "(1) If any provision of [this act] is disapproved by the United States secretary of the interior pursuant to 30 CFR 732, then that portion of [this act] is void.

(2) Within 15 days of the effective date of the disapproval under subsection (1), the department of environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1) has occurred."

Contingent Termination: Section 6, Ch. 524, L. 2023, provided: "[This act] terminates on the date that the department of environmental quality certifies to the code commissioner that the office of surface mining of the United States department of the interior disapproves the changes to Montana's program that are provided in [this act]. The department of environmental quality shall submit certification within 60 days of the occurrence of the contingency."

82-4-204. Repealed. Sec. 111, Ch. 324, L. 2021.

History: En. Sec. 4, Ch. 325, L. 1973; amd. Sec. 17, Ch. 441, L. 1975; R.C.M. 1947, 50-1037; amd. Sec. 3, Ch. 550, L. 1979; amd. Sec. 368, Ch. 418, L. 1995.

82-4-205. Administration by department and board. (1) The department shall adopt, after an opportunity for a hearing, general rules pertaining to strip mining and to underground mining to accomplish the purposes of this part. The department may adopt rules with respect to filing of reports, issuance of permits, monitoring, and other matters of procedure and administration.

(2) The department:

(a) shall exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

(b) shall review for approval or disapproval all plans and specifications submitted by an operator for the method of operation, subsidence stabilization, water control, backfilling, grading, highwall reduction, and topsoiling and for the reclamation of the area of land affected by the operator's operation;

(c) shall issue orders requiring an operator to adopt the remedial measures necessary to comply with this part and rules adopted under this part;

(d) shall order the suspension of any permit for failure to comply with this part or a rule adopted under this part;

(e) shall issue an order revoking a permit when the requirements set forth by a notice of violation, order of suspension, or order requiring remedial measures have not been complied with according to the terms in the notice or order;

(f) shall order the halting of any operation that is started without first having obtained a permit as required by this part or order the cessation of operations not in compliance with this part in accordance with 82-4-251;

(g) shall conduct public hearings required under this part or rules adopted pursuant to this part;

(h) shall conduct investigations and inspections necessary to ensure compliance with this part; and

(i) may encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to strip mining and to underground mining and reclamation of lands and waters affected by strip mining and underground mining.

(3) The board shall conduct contested case hearings under this part.

History: **En. Sec. 5, Ch. 325, L. 1973; amd. Sec. 18, Ch. 441, L. 1975; R.C.M. 1947, 50-1038; amd. Sec. 4, Ch. 550, L. 1979; amd. Sec. 369, Ch. 418, L. 1995; amd. Sec. 3, Ch. 273, L. 1997; amd. Sec. 8, Ch. 79, L. 2001; amd. Sec. 86, Ch. 324, L. 2021.**

Cross-References

Adoption of rules by administrative agencies, Title 2, ch. 4, part 3.

Contested case procedure, Title 2, ch. 4, part 6.

Noncompliance — suspension and revocation of permits, 82-4-251.

Mandamus to compel enforcement, 82-4-252.

82-4-206. Procedure for contested case hearings. (1) An applicant, permittee, or person with an interest that is or may be adversely affected and who submitted comments or written objections during the relevant comment period for an application pursuant to subsections (1)(a) through (1)(e), may request a hearing before the board on any of the following decisions of the department by submitting a written request stating the reason for the request within 30 days after the department's decision:

(a) approval or denial of an application for a permit pursuant to 82-4-231;

(b) approval or denial of an application for a prospecting permit pursuant to 82-4-226;

(c) approval or denial of an application to increase or reduce a permit area pursuant to 82-4-225;

(d) approval or denial of an application to renew or revise a permit pursuant to 82-4-221; or

(e) approval or denial of an application to transfer a permit pursuant to 82-4-238 or 82-4-250.

(2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under subsection (1). *(2025 amendments in subsection (1) void on occurrence of contingency—sec. 5, Ch. 703, L. 2025.)*

History: **En. Sec. 24, Ch. 325, L. 1973; R.C.M. 1947, 50-1057; amd. Sec. 9, Ch. 79, L. 2001; amd. Sec. 1, Ch. 127, L. 2005; amd. Sec. 1, Ch. 703, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 703, L. 2025. Amendment effective May 13, 2025, and void on occurrence of contingency.

Contingent Voidness: Section 5, Ch. 703, L. 2025, provided: "(1) If any provision of [this act] is disapproved by the United States secretary of the interior pursuant to 30 CFR 732, then that portion of [this act] is void.

(2) Within 15 days of the effective date of the disapproval under subsection (1), the department of environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1) has occurred."

82-4-207. Rulemaking — in situ coal gasification. (1) Within 1 year of October 1, 2011, and in accordance with subsection (3), the department shall adopt rules necessary to regulate underground mining using in situ coal gasification.

(2) Unless required by this part, the department may not adopt a rule to regulate in situ coal gasification that is more stringent than the comparable federal regulations or guidelines that address the same circumstances.

(3) The department shall solicit, document, consider, and address comments from the board of oil and gas conservation provided for in 2-15-3303 in developing rules pursuant to subsection (1).

History: En. Sec. 1, Ch. 398, L. 2011; amd. Sec. 87, Ch. 324, L. 2021.

82-4-208 through 82-4-220 reserved.

82-4-221. *(Temporary)* **Mining permit required.** (1) An operator may not engage in strip or underground mining without having first obtained from the department a permit designating the area of land affected by the operation. The designation must include all lands reasonably anticipated to be mined or otherwise affected during the applicable 5-year period. The permit must authorize the operator to engage in strip or underground mining upon the area of land described in the application and designated in the permit for a period of 5 years from the date of its issuance. The permit is renewable upon each 5-year anniversary after issuance upon application to the department at least 240 but not more than 300 days prior to the renewal date so long as the operator is in compliance with the requirements of this part, the rules adopted to implement this part, and the reclamation plan provided for in 82-4-231 and agrees to comply with all applicable laws and rules in effect at the time of renewal. The renewal is further subject to the denial provisions of 82-4-227, 82-4-234, and 82-4-251. On application for renewal, the burden is on the opponents of renewal to demonstrate that the permit should not be renewed. A permit must terminate if the permittee has not commenced strip- or underground-mining operations pursuant to the permit within 3 years of the issuance of the permit. However, the department may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding the commencement or threatening substantial economic loss to the permittee or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee is considered to have commenced strip- or underground-mining operations at the time the construction of the synthetic or generating facility is initiated.

(2) As a condition to the issuance of each permit issued under this part, an authorized representative of the department shall, without advance notice, have the right of entry to, upon, or through a strip- or underground-mining operation or any premises in which any records required to be maintained under this part are located and may, at reasonable times and without delay, have access to copy any records and inspect any monitoring equipment or method of operation required under this part. When an inspection results from information provided to the department by any person, the department shall notify that person when the inspection is proposed to be made and that person must be allowed to accompany the inspector during the inspection.

(3) Applications for major revisions are subject to all the permit application requirements and procedures. *(Terminates on occurrence of contingency—sec. 6, Ch. 524, L. 2023.)*

82-4-221. *(Effective on occurrence of contingency)* **Mining permit required.** (1) An operator may not engage in strip or underground mining without having first obtained from the department a permit designating the area of land affected by the operation. The designation must include all lands reasonably anticipated to be mined or otherwise affected during the applicable 5-year period. The permit must authorize the operator to engage in strip or underground mining upon the area of land described in the application and designated in the permit for a period of 5 years from the date of its issuance. The permit is renewable upon each 5-year anniversary after issuance upon application to the department at least 240 but not more than 300 days prior to the renewal date so long as the operator is in compliance with the requirements of this part, the rules adopted to implement this part, and the reclamation plan provided for in 82-4-231 and agrees to comply with all applicable laws and rules in effect at the time of renewal. The renewal is further subject to the denial provisions of 82-4-227, 82-4-234, and 82-4-251. On application for renewal, the burden is on the opponents of renewal to demonstrate that the permit should not be renewed. A permit must terminate if the permittee has not commenced strip- or underground-mining operations pursuant to the permit within 3 years of the issuance of the permit. However, the department may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding the commencement or threatening substantial economic loss to the permittee or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee is considered to have commenced strip- or underground-mining operations at the time the construction of the synthetic or generating facility is initiated.

(2) As a condition to the issuance of each permit issued under this part, an authorized representative of the department shall, without advance notice, have the right of entry to, upon, or through a strip- or underground-mining operation or any premises in which any records required to be maintained under this part are located and may, at reasonable times and without delay, have access to copy any records and inspect any monitoring equipment or method of operation required under this part. When an inspection results from information provided to the department by any person, the department shall notify that person when the inspection is proposed to be made and that person must be allowed to accompany the inspector during the inspection.

(3) During the term of the permit, the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the department. The department may not approve the application unless it finds that reclamation in accordance with this part would be accomplished. Application for minor revision must be approved or disapproved within a reasonable time, depending on the scope and complexity, but within 60 days, which may be extended by an additional 30 days by mutual agreement of the department and the applicant. Applications for major revisions are subject to all the permit application requirements and procedures.

History: En. Sec. 6, Ch. 325, L. 1973; amd. Sec. 1, Ch. 221, L. 1975; amd. Sec. 19, Ch. 441, L. 1975; amd. Sec. 1, Ch. 352, L. 1977; R.C.M. 1947, 50-1039(1); amd. Sec. 5, Ch. 550, L. 1979; amd. Sec. 2, Ch. 437, L. 1981; amd. Sec. 2, Ch. 159, L. 1995; amd. Sec. 3, Ch. 204, L. 2003; amd. Sec. 3, Ch. 524, L. 2023.

Compiler's Comments

Contingent Termination: Section 6, Ch. 524, L. 2023, provided: "[This act] terminates on the date that the department of environmental quality certifies to the code commissioner that the office of surface mining of the United States department of the interior disapproves the changes to Montana's program that are provided in [this act]. The department of environmental quality shall submit certification within 60 days of the occurrence of the contingency."

Cross-References

Duration of lease of state lands described in strip-mine permit, 77-3-314.

Landowner notification of surface operations, Title 82, ch. 2, part 3.

82-4-222. Permit application — application revisions. (1) An operator desiring a permit shall file an application that must contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. The plan must reflect thorough advance investigation and study by the operator, include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of use, and provide:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the area of land to be affected by the permit and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the affected area;

(c) the names and addresses of the present owners of record and any purchasers under contracts for deed of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this part and an identification of those permits;

(g) (i) whether the applicant is in compliance with 82-4-251 and, if known, whether each officer, partner, director, or any individual, owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant, is subject to any of the provisions of 82-4-251. If so, the applicant shall certify the fact. The information required in this subsection (1)(g) must be updated and approved by the department in the event of a change in the parties specified in this subsection (1)(g)(i) as a result of bankruptcy or reorganization.

(ii) whether any of the parties or persons specified in subsection (1)(g)(i) have ever had a strip-mining or underground-mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond. If so, a detailed explanation of the facts involved in each case must be attached.

(iii) evidence, determined by department rule and in accordance with 82-4-231, that the parties or persons specified in subsection (1)(g)(i) will provide bonding or other financial assurance necessary to meet their financial [obligations for employee pensions and] obligations to reclaim property in accordance with the requirements of 82-4-231 through 82-4-234. [An operator may not pass the costs associated with the financial obligations for employee pensions established in this subsection (1)(g)(iii) on to purchasers served by the strip or underground mine if the purchasers are dependent on the mine to generate electricity that is consumed by electric customers.]

(h) whether the applicant has a record of outstanding reclamation fees with the federal coal regulatory authority;

(i) the names and addresses of any persons who are engaged in strip-mining or underground-mining activities on behalf of the applicant;

(j) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(k) the results of any test borings or core samplings that the applicant or the applicant's agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of the minerals, including the acidity, sulfur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of the seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application must contain two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set must depict subsurface conditions at intervals the department requires across the surface and must run at a 90-degree angle to the other set. The department may not require intervals of less than 500 feet. Each cross section must depict the thickness and geologic character of all known strata, beginning with the topsoil. In addition, each application for an underground-mining permit must be accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit period. These cross sections must also include all existing shafts, entries, and haulageways.

(l) the name of a newspaper of general circulation in the locality of the proposed activity in which the applicant will prominently publish at least once a week for 4 successive weeks after submission of the application an announcement of the applicant's application for a strip-mining or underground-mining permit and a detailed description of the area of land to be affected if a permit is granted. If that newspaper is not published in Montana, the applicant shall also provide the name of a newspaper of general circulation in the county in which the proposed operation is located that is published in Montana in which the applicant will publish an announcement and description in accordance with this subsection.

(m) a determination of the probable hydrologic consequences of coal mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime and quantity and quality of water in surface water and ground water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas, so that cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability can be made. However, this determination is not required until hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency if the information is available. If the information is not available, the department shall make a determination using hydrologic and geologic information collected by the applicant for the purposes of completing the permit application. The permit may not be approved until the information is available and is incorporated into the application. The determination of probable hydrologic consequences must include findings on:

(i) whether adverse impacts may occur to the hydrologic balance;

(ii) whether acid-forming or toxic-forming materials are present that could result in the contamination of ground water or surface water supplies;

(iii) whether the proposed operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas that is used for domestic, agricultural, industrial, or other beneficial use; and

(iv) what impact the operation will have on:

(A) sediment yields from the disturbed area;

(B) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

(C) flooding or streamflow alteration;

(D) ground water and surface water availability; and

(E) other characteristics required by the department that potentially affect beneficial uses of water in and adjacent to the permit area.

(n) a plan for monitoring ground water and surface water, based upon the determination of probable hydrologic consequences required under subsection (1)(m). The plan must provide for the monitoring of parameters that relate to the availability and suitability of ground water and surface water for current and approved postmining land uses and the objectives for protection of the hydrologic balance.

(o) a map depicting the projected postmining topography, using cross sections, range diagrams, or other methods approved by the department, showing the manner of spoil placement, showing removal of coal volume and overburden swell, and including:

(i) locations and elevations of tie-in points with adjacent unmined drainageways;

(ii) approximate locations of primary or highest order drainageways and associated drainage divides in the reclaimed topography; and

(iii) projected elevations of primary drainageways and associated drainage divides and generalized slopes with the level of detail appropriate to project the approximate original contour;

(p) the condition of the land to be covered by the permit prior to any mining, including:

(i) the land uses existing at the time of the application and, if the land has a history of previous mining, the uses that preceded any mining;

(ii) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil characteristics, topography, and vegetative cover; and

(iii) the productivity of the land prior to mining, including appropriate classification as prime farm land, as well as the average yield of food, fiber, forage, or wood products from land under high levels of management;

(q) a coal conservation plan;

(r) other or further information as the department may require.

(2) The application for a permit must be accompanied by maps meeting the requirements of subsections (2)(a) through (2)(n). The maps must:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining, the boundaries of surface properties, and names of owners of record of the affected area and within 1,000 feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of the area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan must indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the proposed location of all facilities;

(j) show the location of test boring holes;

(k) show the surface location lines of any geologic cross sections that have been submitted;

(l) show a listing of plant species encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree species and the approximate number of each species occurring per acre on the area to be affected, and the locations generally of the various species of plants;

(m) be certified by a professional engineer or professional land surveyor licensed as provided by Title 37, chapter 67; and

(n) contain other or further information as the department may require.

(3) If the department finds that the probable total annual production at all locations of any strip-mining or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable hydrologic consequences that the department requires and the statement of result of test borings or core samplings must, upon written request of the operator, be performed by a qualified public or private laboratory designated by the department. The department shall assume the cost of the determination and statement to the extent that it has received funds for this purpose.

(4) In addition to the information and maps required by this section, each application for a permit must be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction, topsoiling, planting, and revegetating, and a reclamation plan for the area affected by the operation, which proposals must meet the requirements of this part and rules adopted under this part. The reclamation plan must address the life of the operation and indicate the size, sequence, and the timing of the subareas for which it is anticipated that individual permits will be sought.

(5) Each applicant for a coal mining permit shall submit as part of the application a certificate issued by an insurance company authorized to do business in the state, certifying that the applicant has in force for the strip-mining or underground-mining and reclamation operations for which the permit is sought a public liability insurance policy or evidence that the applicant has satisfied other state or federal self-insurance requirements. This policy must provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of strip-mining or underground-coal-mining and reclamation operations, including use of explosives, and entitled to compensation under applicable provisions of state law. The permittee shall maintain the policy in full force and effect during the term of the permit and any renewal until all reclamation operations have been completed.

(6) An applicant may revise an application for a permit, a permit amendment, or a permit revision that is pending on January 1, 2004, in order to incorporate the provisions of this part.

(7) A permittee may apply to revise and the department may approve an application to incorporate the provisions of this part into a reclamation plan approved before January 1, 2004. The reclamation plan may be revised whether or not reclamation has been completed pursuant to the reclamation plan.

(8) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of the applicant's application for public inspection with the clerk and recorder at the courthouse of the county in which the major portion of mining is proposed to occur or at another accessible public office or facility approved by the department. *(2025 amendments in subsection (1)(m) void on occurrence of contingency—sec. 4, Ch. 464, L. 2025—see compiler's comment; bracketed language in subsection (1)(g)(iii) terminates on occurrence of contingency—sec. 4, Ch. 484, L. 2019.)*

History: En. Sec. 6, Ch. 325, L. 1973; amd. Sec. 1, Ch. 221, L. 1975; amd. Sec. 19, Ch. 441, L. 1975; amd. Sec. 1, Ch. 352, L. 1977; R.C.M. 1947, 50-1039(5) thru (7); amd. Sec. 1, Ch. 196, L. 1979; amd. Sec. 6, Ch. 550, L. 1979; amd. Sec. 3, Ch. 437, L. 1981; amd. Sec. 25, Ch. 526, L. 1983; amd. Sec. 2, Ch. 70, L. 1987; amd. Sec. 57, Ch. 16, L. 1991; amd. Sec. 4, Ch. 204, L. 2003; (6) and (7)En. Sec. 11, Ch. 204, L. 2003; amd. Sec. 69, Ch. 44, L. 2007; amd. Sec. 10, Ch. 96, L. 2013; amd. Sec. 1, Ch. 98, L. 2013; amd. Sec. 1, Ch. 484, L. 2019; amd. Sec. 3, Ch. 631, L. 2023; amd. Sec. 2, Ch. 464, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 464, L. 2025. Amendment effective May 5, 2025, and void on occurrence of contingency.

Retroactive Applicability: Section 6, Ch. 464, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to actions for judicial review or other causes of action challenging the issuance of a permit petition for review, amendment, license, arbitration, action, certificate, or inspection that are pending but not yet decided on or after [the effective date of this act]." Effective May 5, 2025.

Contingent Voidness: Sec. 4, Ch. 464, L. 2025, provided: "(1) If any provision of [this act] is disapproved by the United States secretary of the interior pursuant to 30 CFR 732, then that portion of [this act] is void.

(2) Within 15 days of the effective date of the disapproval under subsection (1), the department of environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1) has occurred."

Contingent Termination: Section 4, Ch. 484, L. 2019, provided: "If the bracketed language in subsection (1)(g)(iii) as included in [section 1] [82-4-222] is invalidated or found to be unconstitutional by a court of competent jurisdiction on its final disposition, then the bracketed language in subsection (1)(g)(iii) as included in [section 1] [82-4-222] terminates on the date of the invalidation or the finding of unconstitutionality." Amendment effective May 13, 2019.

Cross-References

Documents subject to recording by County Clerk, 7-4-2613.
Recording fees of County Clerk, 7-4-2631.
Additional requirements of reclamation plan, 82-4-231(2).
Hearing on application for permit, 82-4-231(9).

82-4-223. Surety bond. (1) Before a permit may be issued, the operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in an amount to be determined by the department of not less than $200 for each acre or fraction of an acre of the area of land affected, with a minimum bond of $10,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the department. The operator may elect to deposit cash, negotiable bonds, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of these securities must be equal to or greater than the amount of the bond required for the bonded area. The level of bonding must be relative to the degree of disturbance projected by the original permit and the annual report. A political subdivision or agency of the state need not file a bond unless required to do so by the department. The department shall adjust the amount of bond required if the cost of reclamation changes.

(2) In determining the amount of the bond, the department shall take into consideration the character and nature of the overburden, the future suitable use of the land involved, and the cost of backfilling, grading, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be required, but the bond may not be less than the total estimated cost to the state of completing the work described in the reclamation plan.

History: En. Sec. 6, Ch. 325, L. 1973; amd. Sec. 1, Ch. 221, L. 1975; amd. Sec. 19, Ch. 441, L. 1975; amd. Sec. 1, Ch. 352, L. 1977; R.C.M. 1947, 50-1039(8); amd. Sec. 7, Ch. 550, L. 1979; amd. Sec. 3, Ch. 70, L. 1987; amd. Sec. 370, Ch. 418, L. 1995; amd. Sec. 2, Ch. 127, L. 2005; amd. Sec. 88, Ch. 324, L. 2021.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

82-4-224. Repealed. Sec. 1, Ch. 371, L. 1993.

History: En. 50-1039.1 by Sec. 2, Ch. 538, L. 1975; R.C.M. 1947, 50-1039.1.

82-4-225. *(Temporary)* **Application for permit amendment.** (1) A permittee may apply to increase the permit boundary, but an increase may not extend the period for which an original permit was issued. The operator shall file an amendment application and map in the same form and with the same content as required for an original application under this part and shall file with the department a supplemental bond in the amount to be determined under 82-4-223 for each acre or fraction of an acre of the increase approved. All procedures of this part pertaining to original applications apply to applications for the increase of the permit area, except for incidental boundary revisions and minor revisions.

(2) If the department approves a reduction in the acreage covered by the original or supplemental permit, it shall release the bond for each acre reduced, but the bond may not be reduced below $10,000, except as provided in 82-4-223. *(Terminates on occurrence of contingency—sec. 6, Ch. 524, L. 2023.)*

82-4-225. *(Effective on occurrence of contingency)* **Application for increase or reduction in permit area.** The department may increase or reduce the area of land affected by an operation under a permit on application by an operator, but an increase may not extend the period for which an original permit was issued. An operator may, at any time, apply to the department for an amendment of the permit so as to increase or reduce the acreage affected by it. The operator shall file an application and map in the same form and with the same content as required for an original application under this part and shall file with the department a supplemental bond in the amount to be determined under 82-4-223 for each acre or fraction of an acre of the increase approved. All procedures of this part pertaining to original applications apply to applications for the increase of the area of land affected, except for incidental boundary revisions. If the department approves a reduction in the acreage covered by the original or supplemental permit, it shall release the bond for each acre reduced, but the bond may not be reduced below $10,000, except as provided in 82-4-223.

History: En. Sec. 7, Ch. 325, L. 1973; amd. Sec. 2, Ch. 352, L. 1977; R.C.M. 1947, 50-1040; amd. Sec. 8, Ch. 550, L. 1979; amd. Sec. 3, Ch. 127, L. 2005; amd. Sec. 4, Ch. 524, L. 2023.

Compiler's Comments

Contingent Termination: Section 6, Ch. 524, L. 2023, provided: "[This act] terminates on the date that the department of environmental quality certifies to the code commissioner that the office of surface mining of the United States department of the interior disapproves the changes to Montana's program that are provided in [this act]. The department of environmental quality shall submit certification within 60 days of the occurrence of the contingency."

82-4-226. Prospecting permit. (1) Except as provided in subsection (7), prospecting by any person on land not included in a valid strip-mining or underground-mining permit is unlawful without possessing a valid prospecting permit issued by the department as provided in this section. A prospecting permit may not be issued until the person submits an application, the application is examined, amended if necessary, and approved by the department, and an adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this part.

(2) An application for a prospecting permit filed pursuant to subsection (1) must be made in writing, notarized, and submitted to the department upon forms prepared and furnished by it. The application must include among other things a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface-mining or underground-mining map and reclamation plan under this part. The department shall determine by rules the precise nature of the required prospecting map and reclamation plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and other information that may be required by the department. The applicant shall state what types of prospecting and excavating techniques will be employed on the affected land. The application must also include any other or further information that the department may require.

(3) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

(4) In the event that the holder of a prospecting permit desires to strip mine or underground mine the area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or underground-mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating under a prospecting permit and

not covered by the strip-mining or underground-mining reclamation plan must be promptly reclaimed.

(5) The prospecting permit is valid for 1 year and is subject to renewal, suspension, and revocation in the same manner as strip-mining or underground-mining permits under this part.

(6) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under this part.

(7) (a) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to 82-4-227 or 82-4-228, that is not conducted for the purpose of determining the location, quality, or quantity of a mineral deposit, and that does not remove more than 250 tons of coal is not subject to subsections (1) through (6). However, a person who conducts prospecting described in this subsection (7)(a) shall file with the department a notice of intent to prospect that contains the information required by the department before commencing prospecting operations. If this prospecting substantially disturbs the natural land surface, it must be conducted in accordance with the performance standards of the department's rules regulating the conduct and reclamation of prospecting operations that remove coal. The department may inspect these prospecting and reclamation operations at any reasonable time.

(b) (i) Prospecting conducted to determine the location, quality, or quantity of coal outside an area designated unsuitable that is not included in a valid strip-mining or underground-mining permit, that does not substantially disturb the land surface, and that does not remove more than 250 tons of coal is not subject to subsections (1) and (2) but may not be conducted without a valid prospecting permit issued pursuant to subsection (8).

(ii) For purposes of this subsection (7)(b), the drilling of coal prospecting holes, the installation and use of associated disposal pits, and the installation of ground water monitoring wells does not constitute substantial disturbance.

(8) (a) An application for a coal prospecting permit required by subsection (7)(b) must contain:

(i) the name, address, and telephone number of the person who seeks to prospect;

(ii) the name, address, and telephone number of the person's representative who will be present at and responsible for conducting the prospecting activities;

(iii) a narrative describing the proposed prospecting area or a map of the prospecting area at a scale of 1:24,000 or greater showing:

(A) the general location of drill holes and trenches;

(B) existing and proposed roads;

(C) occupied dwellings;

(D) topographic features;

(E) bodies of water; and

(F) pipelines;

(iv) a copy of the documents upon which the applicant bases its legal right to prospect, including documentation that the owners of the land affected have been notified and understand that the department will make investigations and inspections to ensure compliance;

(v) a statement of the period of intended prospecting; and

(vi) a description of the method of prospecting to be used and the practices that will be followed to protect the environment and reclaim disturbed areas, including plugging of prospecting holes, in accordance with rules adopted by the department.

(b) Within 10 working days of receipt of an application, the department shall notify the applicant in writing as to whether the application is complete and preliminarily acceptable. If the department determines that the application is not complete or not preliminarily acceptable, the department shall include a detailed identification of information necessary to cure the deficiency.

(c) Within 5 working days of receipt of the applicant's response to the identified deficiencies, the department shall review the response and notify the person as to whether the application is complete and preliminarily acceptable. If the department determines the application is not complete or preliminarily acceptable, the department shall notify the person in writing and include a detailed identification of information necessary to make the application complete and preliminarily acceptable.

(d) When the department determines that the application is complete and preliminarily acceptable, the department shall notify the applicant in writing. The notification must include the amount of bond that is required to be posted in order for the permit to be issued.

(e) Upon receipt of the department's determination of preliminary acceptability, the applicant shall place an advertisement in a newspaper of general circulation in the locality of the proposed prospecting. The notice must describe the application and a place in the locality where the public may examine the application and must notify the public that it may submit written comments by delivering or mailing them to the department within 10 days following publication of the notice.

(f) After close of the public comment period, the department shall notify the applicant as to whether the application is acceptable. The department shall issue the notification within 5 working days of the close of the comment period if no comments are received and within 10 working days if comments are received. In the notice of acceptability, the department shall notify the applicant of any adjustment in the amount of the bond.

(g) A permit issued pursuant to this subsection (8) is subject to subsections (3) through (6).

History: En. Sec. 8, Ch. 325, L. 1973; amd. Sec. 20, Ch. 441, L. 1975; R.C.M. 1947, 50-1041; amd. Sec. 2, Ch. 196, L. 1979; amd. Sec. 2, Ch. 225, L. 1993; amd. Sec. 3, Ch. 159, L. 1995; amd. Sec. 371, Ch. 418, L. 1995; amd. Sec. 3, Ch. 196, L. 1997; amd. Sec. 4, Ch. 127, L. 2005; amd. Sec. 1, Ch. 407, L. 2011; amd. Sec. 2, Ch. 98, L. 2013; amd. Sec. 89, Ch. 324, L. 2021.

Cross-References

Landowner notification of surface operations, Title 82, ch. 2, part 3.
Reclamation plan and maps required, 82-4-222.
Reclamation surety bond required, 82-4-223.
Inspection of vegetation — release of bond, 82-4-235.
Annual report for mining permit, 82-4-237.

82-4-227. Refusal of permit — applicant violator system. (1) An application for a prospecting, strip-mining, or underground-mining permit or major revision may not be approved by the department unless, on the basis of the information set forth in the application, in an onsite inspection, and in an evaluation of the operation by the department, the applicant has affirmatively demonstrated that the requirements of this part and rules will be observed and that the proposed method of operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area can be carried out consistently with the purpose of this part. The applicant for a permit or major revision has the burden of establishing that the application is in compliance with this part and the rules adopted under it.

(2) The department may not approve the application for a prospecting, strip-mining, or underground-mining permit when the area of land described in the application includes land that has special, exceptional, critical, or unique characteristics or when mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land that has special, exceptional, critical, or unique characteristics. For the purposes of this part, land is defined as having these characteristics if it possesses special, exceptional, critical, or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock;

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the reasonably foreseeable future;

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a systemwide reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archaeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. In applying the provisions of this subsection (d), particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.

(3) The department may not approve an application for a strip- or underground-coal-mining permit or major revision unless the application affirmatively demonstrates that:

(a) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the department and the proposed operation of the mining operation has been designed to prevent material damage to the hydrologic balance outside the permit area; and

(b) the proposed strip- or underground-coal-mining operation would not:

(i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors and excluding land about which the department finds that if any farming will be interrupted, discontinued, or precluded, it is of such small acreage as to be of negligible impact on the farm's agricultural production; or

(ii) materially damage the quantity or quality of water in surface water or underground water systems that supply the valley floors described in subsection (3)(b)(i).

(4) Subsection (3)(b) does not affect those strip- or underground-coal-mining operations that in the year preceding the enactment of Public Law 95-87 produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the department to conduct strip- or underground-coal-mining operations within alluvial valley floors. If coal deposits are precluded from being mined under this subsection, the director of the department shall certify to the secretary of interior that the mineral owner or lessee may be eligible for participation in coal exchange programs pursuant to section 510(5) of Public Law 95-87.

(5) (a) If the area proposed to be mined contains prime farmland, the department may not grant a permit to mine coal on the prime farmland unless it finds in writing that the applicant:

(i) has the technological capability to restore the mined area, within a reasonable time, to levels of yield equivalent to or higher than nonmined prime farmland in the surrounding area under equivalent levels of management; and

(ii) can meet the soil reconstruction standards of 82-4-232(3).

(b) Nothing in this subsection (5) applies to a permit issued prior to August 3, 1977, or to any revisions or renewals of the permit or to any existing strip- or underground-mining operations for which a permit was issued prior to August 3, 1977.

(6) If the department finds that the overburden on any part of the area of land described in the application for a prospecting, strip-mining, or underground-mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, subsidence, landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of the land described in the application upon which the overburden exists. The burden is on the applicant to demonstrate that any area should not be deleted under this subsection.

(7) If the department finds that the operation will constitute a hazard to a dwelling, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting, strip-mining, or underground-mining permit application before it can be approved. Strip- or underground-coal-mining may not be allowed:

(a) within 300 feet of an occupied dwelling, unless waived by the owner;

(b) within 300 feet of any public building, school, church, community, or institutional building, or public park;

(c) within 100 feet of a cemetery;

(d) within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join the right-of-way line. The department may permit the roads to be relocated or the area affected to lie within 100 feet of the road if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected will be protected.

(8) Strip-mining or underground-mining may not be conducted within 500 feet of active or abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners. However, the department shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if:

(a) the nature, timing, and sequencing of specific strip-mine activities and specific underground-mine activities are jointly approved by the department and the regulatory authority concerned with the health and safety of underground miners; and

(b) the operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(9) The department may not approve an application for a strip- or underground-coal-mining operation if the area proposed to be mined is included:

(a) within an area designated unsuitable for strip or underground coal mining; or

(b) within an area under review for this designation under an administrative proceeding, unless in an area as to which an administrative proceeding has commenced pursuant to this part, the operator making the permit application demonstrates that prior to January 1, 1977, the operator made substantial legal and financial commitments in relation to the operation for which the operator is applying for a permit.

(10) A permit or major permit revision for a strip- or underground-coal-mining operation may not be issued unless the applicant has affirmatively demonstrated by its coal conservation plan that failure to conserve coal will not occur. The department may require the applicant to submit any information it considers necessary for review of the coal conservation plan.

(11) Whenever information available to the department indicates that a strip- or underground-coal-mining operation that is owned or controlled by the applicant or by any person who owns or controls the applicant is currently in violation of Public Law 95-87, as amended, any state law required by Public Law 95-87, as amended, or any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection, the department may not issue a strip- or underground-coal-mining permit or amendment, other than an incidental boundary revision, until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the administering agency.

(12) The department may not issue a strip- or underground-coal-mining permit or amendment, other than an incidental boundary revision, to any applicant that it finds, after an opportunity for hearing, owns or controls any strip- or underground-coal-mining operation that has demonstrated a pattern of willful violations of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, when the nature and duration of the violations and resulting irreparable damage to the environment indicate an intent not to comply with the provisions of this part.

(13) Subject to valid existing rights, no strip- or underground-coal-mining operations except those that existed as of August 3, 1977, may be conducted:

(a) on lands within the boundaries of units of the national park system, the national wildlife refuge system, the national wilderness preservation system, the national system of trails, the wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act or study rivers or study river corridors established in any guidelines issued under that act, or national recreation areas designated by an act of congress; or

(b) on any federal lands within national forests, subject to the exceptions and limitations of 30 CFR 761.11(b) and the procedures of 30 CFR 761.13.

(14) (a) A person who is listed by the department in the applicant violator system maintained by the office of surface mining reclamation and enforcement of the U.S. department of the interior pursuant to the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201, et seq., as owning or controlling a strip-mining or underground-mining operation may challenge the ownership or control listing by filing a written request with the department for review of the listing. In the request, the person must include a written explanation of the basis for the challenge and any evidence the person wishes the department to consider. The department shall provide a written response within 60 days of receipt of the request for review.

(b) Within 30 days of receipt of the response pursuant to subsection (14)(a), the person who is listed may request a hearing before the board by submitting to the board a written request for hearing that states the reason for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to the hearing.

History: En. Sec. 9, Ch. 325, L. 1973; amd. Sec. 21, Ch. 441, L. 1975; R.C.M. 1947, 50-1042; amd. Sec. 9, Ch. 550, L. 1979; amd. Sec. 3, Ch. 225, L. 1993; amd. Sec. 372, Ch. 418, L. 1995; amd. Sec. 5, Ch. 127, L. 2005; amd. Sec. 3, Ch. 98, L. 2013.

Cross-References

Safety in mines, Title 50, ch. 72, 73.
Policy — findings, 82-4-202.
Action on application for permit — written findings required, 82-4-231.
Suspension or revocation of permit for repeated violations, 82-4-251.

82-4-228. Designation of land unsuitable for coal mining. (1) Any person having an interest that is or may be adversely affected may petition the department to have an area designated as unsuitable for strip- or underground-coal-mining operations or to have a designation terminated. The petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within 10 months after receipt of the petition, the department shall hold a public hearing in the locality of the affected area after giving appropriate notice and publication of the date, time, and location thereof. Before the hearing, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within 60 days after the hearing, the department shall issue and furnish to the petitioner and any other party to the hearing a written decision regarding the petition and the reasons therefor. The hearing need not be held if all petitioners reach agreement prior to the requested hearing and withdraw their request.

(2) If petitioned, the department shall review the area petitioned for pursuant to this section and:

(a) shall designate it as an area unsuitable for all or certain types of strip- or underground-coal-mining operations if it is determined that reclamation pursuant to the requirements of this part is not technologically and economically feasible; and

(b) may designate it as an area unsuitable for all or certain types of strip or underground coal mining if the proposed coal mining operations will:

(i) be incompatible with existing state or local land use plans or programs to the extent they affect mining in the area; or

(ii) affect fragile or historic lands in which these operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems; or

(iii) affect renewable resource lands in which these operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, these lands to include aquifers and aquifer recharge areas; or

(iv) affect natural hazard lands in which these operations could substantially endanger life and property, these lands to include areas subject to frequent flooding and areas of unstable geology.

(3) Prior to designating any land areas as unsuitable for strip- or underground-coal-mining operations, the department shall prepare a detailed statement on:

(a) the potential coal resources of the area;

(b) the demand for coal resources; and

(c) the impact of this designation on the environment, economy, and supply of coal.

(4) A designation does not prevent mineral exploration pursuant to this part of any area so designated.

(5) The requirements of this section do not apply to lands on which strip- or underground-coal-mining operations are being conducted pursuant to a permit issued under this part or where substantial legal and financial commitments in these operations were in existence prior to January 4, 1977.

History: En. Sec. 10, Ch. 550, L. 1979.

Cross-References

Coal exploration permit required, 82-4-121.
Coal prospecting permit required, 82-4-226.
Resource development and reclamation, Title 90, ch. 2.

82-4-229. *(Temporary)* **Minor revisions — application — exemptions.** (1) During the term of a permit, the permittee may apply to the department to revise the permit and reclamation plan. Major revisions are subject to the provisions of 82-4-225.

(2) An application for a minor revision must:

(a) summarize proposed changes in sufficient detail for the department to determine that reclamation required under state and federal law will be accomplished;

(b) contain evidence that the changes in disturbed acres are insignificant in impact relative to the entire operation;

(c) identify previous environmental analyses relevant to the revision and demonstrate that the minor revision does not significantly change the human environment;

(d) document the adequacy of existing bonding; and

(e) include evidence that the permittee provided notice of the application for permit revision to the affected surface owner.

(3) Minor revisions are not subject to 82-4-231 and are exempt from the provisions of Title 75, chapter 1, parts 1 and 2.

(4) The department shall:

(a) notify the permittee if the minor revision application is adequate within 30 days of receipt; and

(b) approve the application within 60 days of the date the applicant is notified the application is adequate, provided the department determines the minor revision meets the requirements of this section and ensures adequate reclamation. Upon agreement of the permittee and the department, the period may be extended 30 days. *(Terminates on occurrence of contingency—sec. 6, Ch. 524, L. 2023.)*

History: En. Sec. 1, Ch. 524, L. 2023.

Compiler's Comments

Contingent Termination: Section 6, Ch. 524, L. 2023, provided: "[This act] terminates on the date that the department of environmental quality certifies to the code commissioner that the office of surface mining of the United States department of the interior disapproves the changes to Montana's program that are provided in [this act]. The department of environmental quality shall submit certification within 60 days of the occurrence of the contingency."

82-4-230 reserved.

82-4-231. Submission of and action on reclamation plan. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by the operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the department, an operator shall prepare and carry out a method of operation, a plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, and topsoiling and a reclamation plan for the area of land affected by the operation. In developing a method of operation and plans of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation, all measures must be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan must set forth in detail the manner in which the applicant intends to comply with 82-4-232 through 82-4-234 and this section and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for a permit or major revision of a permit, which must contain the reclamation plan, must be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items that the application must address. The application is presumed administratively complete as to those requirements not specified in the notice.

(5) If the department determines that an environmental impact statement on the application is required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

(6) After the applicant receives notice that the application is administratively complete, the applicant shall publish notice of filing of the application once a week for 4 consecutive weeks

in a newspaper of general circulation in the locality of the proposed operation. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest that is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority may file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 30 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for its decision within 60 days of the informal conference. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(7) The filing of written objections or a request for an informal conference may not preclude the department from proceeding with its review of the application as specified in subsection (8).

(8) (a) The department shall review each administratively complete application and determine the acceptability of the application. During the review, the department may propose modifications to the application or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is considered acceptable when the application is in compliance with all of the applicable requirements of this part and the regulatory program pursuant to this part.

(b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

(c) If an environmental impact statement is determined to be necessary prior to making a permit decision, the department shall complete and publish the final environmental impact statement at least 15 days prior to the date of issuance of the written findings pursuant to subsection (8)(f).

(d) Except as provided in 75-1-205(4) and 75-1-208(4)(b), within 120 days after it determines that an application is administratively complete, the department shall notify the applicant in writing whether the application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not specified as unacceptable in the department's notification are presumed to be acceptable. Except as provided in 75-1-208(4)(b), if the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 120 days of the date of receipt whether the revised application is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness determination.

(e) When the application is determined to be acceptable, the department shall publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. If the department required a cumulative hydrologic impact assessment to meet the requirements of this part, the department shall publish a draft of that assessment and the department's determination. Any person having an interest that is or may be adversely affected by the determination or the cumulative hydrologic impact assessment may file a written objection to the determination within 10 days of the department's last published notice. If a written objection is filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for the decision within 10 days of the informal conference.

(f) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall prepare written findings granting or denying the permit or major revision application in whole or in part not later than 60 days from the date the application is determined acceptable. However, if lands subject to the federal lands program are included in the application for permit or major revision, the department shall prepare and submit written findings to the federal regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date when the concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification to the applicant.

(g) If the department fails to act within the times specified in this subsection (8), it shall immediately notify the board in writing of its failure to comply and the reasons for the failure to comply.

(9) The applicant, the permittee, a landowner, or any person with an interest that is or may be adversely affected by the department's permit decision and who submitted a written objection pursuant to subsection (8) may within 30 days of the department's decision submit a written notice requesting a hearing. The notice must contain the grounds upon which the requester contends that the decision is in error and must be limited to the issues raised in written objections and issues in the department's decision not addressed by the department in its notice of determination published pursuant to subsection (8)(e). The hearing must be started within 30 days of the request. For purposes of a hearing, the board or its hearings officer may order site inspections of the area pertinent to the application. The board shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. A person who presided at the informal conference may not preside at the hearing or participate in the decision.

(10) In addition to the method of operation, grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1), shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid-producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules, seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the department approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner, with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant is required to show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health or to domestic livestock or a viable agricultural operation, or violate any other restrictions the department may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in a manner that will prevent or minimize land subsidence. The remaining waste material must be disposed of as provided by this part and the rules of the department.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of those resources when practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in adjacent areas and to the quality and quantity of water in surface water and ground water systems both during and after strip- or underground-coal-mining operations and during reclamation by:

(i) avoiding acid or other toxic mine drainage by measures including but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content that adversely affects downstream water upon being released to watercourses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but the contributions may not be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement of strip- or underground-mining operations, with the structures to be certified by a qualified registered engineer and to be constructed as designed and as approved in the reclamation plan. The siltation structures must each be constructed with the design capacity specified in administrative rule to detain the water inflow or runoff entering the pond from an anticipated precipitation event plus the average inflow from the underground mine, if applicable. Operation of a siltation structure with this design capacity requirement is compliant with this part even if the pond capacity is exceeded as a result of water inflow or runoff entering the pond from a multistorm event consisting of a series of small, consecutive storm events that cumulatively exceed the anticipated precipitation event and the operator actively undertakes measures to restore pond capacity as soon as weather and ground conditions permit.

(iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations that requires the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country;

(vii) designing and constructing reclaimed channels of intermittent streams and perennial streams to ensure long-term stability; and

(viii) any other actions that the department may prescribe;

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except when the department determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in proximity to the channel so as to seriously alter the normal flow of water;

(q) meet other criteria that are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions that constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in a manner that prevents a gravity discharge of water from the mine.

(11) An operator may not throw, dump, pile, or permit the throwing, dumping, or piling or otherwise placing of any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land that is under permit and for which a bond has been posted under 82-4-223 or place

the materials described in this section in a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or underground-mining operation in a manner that protects areas outside the permit area. *(Certain 2025 amendments void on occurrence of contingency—sec. 3, Ch. 203, L. 2025—see compiler's comment; certain 2025 amendments void on occurrence of contingency—sec. 5, Ch. 703, L. 2025—see compiler's comment.)*

History: En. Sec. 10, Ch. 325, L. 1973; amd. Sec. 22, Ch. 441, L. 1975; amd. Sec. 12, Ch. 39, L. 1977; R.C.M. 1947, 50-1043; amd. Sec. 11, Ch. 550, L. 1979; amd. Sec. 1, Ch. 289, L. 1985; amd. Sec. 373, Ch. 418, L. 1995; amd. Sec. 1, Ch. 82, L. 2001; amd. Sec. 11, Ch. 299, L. 2001; amd. Sec. 5, Ch. 204, L. 2003; amd. Sec. 6, Ch. 127, L. 2005; amd. Sec. 14, Ch. 337, L. 2005; amd. Sec. 90, Ch. 324, L. 2021; amd. Sec. 1, Ch. 203, L. 2025; amd. Sec. 2, Ch. 703, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 1, Ch. 203, L. 2025. Amendment effective April 17, 2025, and void on occurrence of contingency.

See 2025 Session Law for amendment made by sec. 2, Ch. 703, L. 2025. Amendment effective May 13, 2025, and void on occurrence of contingency.

Contingent Voidness: Section 3, Ch. 203, L. 2025, provided: "(1) If any provision of [this act] is disapproved by the United States secretary of the interior pursuant to 30 CFR 732, then that portion of [this act] is void.

(2) Within 15 days of the effective date of the disapproval under subsection (1), the department of environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1) has occurred."

Section 5, Ch. 703, L. 2025, provided: "(1) If any provision of [this act] is disapproved by the United States secretary of the interior pursuant to 30 CFR 732, then that portion of [this act] is void.

(2) Within 15 days of the effective date of the disapproval under subsection (1), the department of environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1) has occurred."

Cross-References

Safety in coal mines, Title 50, ch. 73.
Air quality control, Title 75, ch. 2.
Water quality control, Title 75, ch. 5.
Aquatic ecosystem protection, Title 75, ch. 7.
Control of hazardous wastes, Title 75, ch. 10, part 14.
Permit application — contents of reclamation plan, 82-4-222.
Coal conservation plan required, 82-4-222(1)(n).
Refusal of permit, 82-4-227.
Action in response to complaints related to use of explosives, 82-4-356.

82-4-232. Area mining required — bond — alternative plan. (1) (a) Area strip mining, a method of operation that does not produce a bench or fill bench, is required where strip mining is proposed. The area of land affected must be backfilled and graded to the approximate original contour of the land. However:

(i) consistent with the adjacent unmined landscape elements, the operator may propose and the department may approve regraded topography gentler than premining topography in order to enhance the postmining land use and develop a postmining landscape that will provide greater moisture retention, greater stability, and reduced soil losses from runoff and erosion;

(ii) postmining slopes may not exceed the angle of repose or lesser slope as is necessary to achieve a long-term static safety factor of 1.3 or greater and to prevent slides;

(iii) permanent impoundments may be approved if they are suitable for the postmining land use and otherwise meet the requirements of this part, as provided by department rules; and

(iv) reclaimed topography must be suitable for the approved postmining land use.

(b) Spoil from the first cut is not required to be transported to the last cut if highwalls are eliminated, box cut spoils are graded to blend in with the surrounding terrain, and the approximate original contour of the land is achieved.

(c) When directed by the department, the operator shall construct in the final grading diversion ditches, depressions, or terraces that will accumulate or control the water runoff.

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the department. These rules may require any measure to accomplish the purpose of this part.

(3) For coal mining on prime farmlands, the department shall establish by rule specifications for soil removal, storage, replacement, and reconstruction, and the operator must as a minimum be required to:

(a) (i) segregate the A horizon of the natural soil, except when it can be shown that other available soil materials will create a final soil having a greater productive capacity; and

(ii) if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(b) (i) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination of the horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that that existed in the natural soil; and

(ii) if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by acid or toxic material;

(c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction and uniform depth over the regraded spoil material; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

(4) All available topsoil must be removed in a separate layer, guarded from erosion and pollution, and kept in a condition so that it can sustain vegetation of at least the quality and variety it sustained prior to removal. However, the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit of material that is best able to support vegetation must be returned as the top layer.

(5) As determined by rules of the department, time limits must be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling must be completed before necessary equipment is moved from the operation.

(6) (a) (i) The permittee may file an application with the department for the release of all or part of a performance bond. The application must contain a proposed public notice of the precise location of the land affected, the number of acres for which bond release is sought, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's approved reclamation plan. The description of the results may include other information or methods, including predictive modeling, which may be used in conjunction with monitoring data compiled for the performance bond release application to demonstrate compliance with the approved reclamation plan.

(ii) As part of any bond release application, the permittee shall submit copies of letters that the permittee has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality of the operation, notifying them of the permittee's intention to seek release from the bond.

(b) The department shall determine whether the application is administratively complete. An application is administratively complete if it includes:

(i) the location and acreage of the land for which bond release is sought;

(ii) the amount of bond release sought;

(iii) a description of the completed reclamation, including the date of performance;

(iv) a discussion of how the results of the completed reclamation satisfy the requirements of the approved reclamation plan, which may include a description of other information or methods, including predictive modeling, which may be used in conjunction with monitoring data for the purposes of demonstrating compliance with the approved reclamation plan; and

(v) information required by rules implementing this part.

(c) The department shall notify the applicant in writing of its determination no later than 60 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items that the application must address. After an application for bond release has been determined to be administratively complete by the department, the permittee shall publish a public notice that has been approved as to form and content by the department at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the mining operation.

(d) Any person with a valid legal interest that might be adversely affected by the release of a bond or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to the operation may file written objections to the proposed release of bond to the department within 30 days after the last publication of the notice. If written objections are filed and a hearing is requested, the department shall hold a public hearing in the locality of the operation proposed for bond release or in Helena, at the option of the objector, within 30 days of the request for hearing. The department shall inform the interested parties of the time and place of the hearing. The date, time, and location of the public hearing must be advertised by the department in a newspaper of general circulation in the locality for 2 consecutive weeks. Within 30 days after the hearing, the department shall notify the permittee and the objector of its final decision.

(e) Without prejudice to the rights of the objector or the permittee or the responsibilities of the department pursuant to this section, the department may establish an informal conference to resolve written objections.

(f) For the purpose of the hearing under subsection (6)(d), the department may administer oaths, subpoena witnesses or written or printed materials, compel the attendance of witnesses or the production of materials, and take evidence, including but not limited to conducting inspections of the land affected and other operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required by this section must be made, and a transcript must be made available on the motion of any party or by order of the department.

(g) If the applicant significantly modifies the application after the application has been determined to be administratively complete, the department shall conduct a new review, including an administrative completeness determination. A significant modification includes but is not limited to:

(i) the notification of an additional property owner, local governmental body, planning agency, or sewage and water treatment authority of the permittee's intention to seek a bond release;

(ii) a material increase in the acreage for which a bond release is sought or in the amount of bond release sought; or

(iii) a material change in the reclamation for which a bond release is sought or the information used to evaluate the results of that reclamation.

(h) The department shall, within 30 days of determining that the application is administratively complete or as soon as weather permits, conduct an inspection and evaluation of the reclamation work involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of the pollution, and the estimated cost of abating the pollution. Other information or methods acceptable to the department, including predictive modeling, may be used in conjunction with monitoring data for the purposes of the evaluation and to demonstrate compliance with the approved reclamation plan.

(i) The department shall review each administratively complete application to determine the acceptability of the application. A complete application is acceptable if the application is in compliance with all of the applicable requirements of this part, the rules adopted under this part, and the permit. Other information or methods acceptable to the department, including predictive modeling, may be used in conjunction with monitoring data for the purposes of determining the acceptability of the application and demonstrating compliance with the approved reclamation plan.

(j) (i) The department shall notify the applicant in writing regarding the acceptability of the application no later than 60 days from the date of the inspection.

(ii) If the department determines that the application is not acceptable, it shall specify in the notice those items that the application must address.

(iii) If the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 60 days of the date of receipt as to whether the revised application is acceptable.

(iv) If the revision constitutes a significant modification, the department shall conduct a new review, beginning with an administrative completeness determination.

(v) A significant modification includes but is not limited to:

(A) the notification of an additional property owner, local governmental body, planning agency, or sewage and water treatment authority of the permittee's intention to seek a bond release;

(B) a material increase in the acreage for which a bond release is sought or the amount of bond release sought; or

(C) a material change in the reclamation for which a bond release is sought or the information used to evaluate the results of that reclamation.

(k) At the request of the permittee, and for a designated area within the permit boundary within or across affected drainage basins, the department shall release the bond in whole or in part if the reclamation covered by the bond or portion of the bond has been accomplished as required by this part according to the following schedule:

(i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded area in accordance with the approved reclamation plan, the department shall release 60% of the bond or collateral for the designated area within the permit boundary.

(ii) The department shall release a portion of the bond for the designated area that would be sufficient for a third party to cover the cost of replacing soil after revegetation and soil stability have been established in the designated area in accordance with the approved reclamation plan. Whenever a silt dam is to be retained as a permanent impoundment, that portion of the bond may also be released under this subsection (6)(k)(ii) if provisions for sound future maintenance by the operator or the landowner are made with the department. Other information or methods acceptable to the department, including predictive modeling, may be used in conjunction with monitoring data for the purposes of determining soil replacement costs or silt dam maintenance and demonstrating compliance with the approved reclamation plan.

(iii) Except as provided in subsection (6)(k)(iv), in accordance with the requirements of 82-4-235, upon expiration of the period specified for responsibility, and after the designated area has been successfully revegetated, the remaining total of the bond required for a third party to establish vegetation must be released for the designated area.

(iv) The department shall retain a portion of the bond sufficient for a third party to fully satisfy remaining permit conditions if:

(A) the disturbed areas eligible for release are contributing suspended solids to streamflow or runoff outside of the affected drainage basin or permit boundary in excess of the requirements of 82-4-231(10)(k), as demonstrated by either sediment sampling or predictive modeling as approved by the department;

(B) soil productivity for prime farmlands eligible for release is not returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey; or

(C) the permittee has not successfully completed all reclamation activities, including water replacement, in the designated area.

(v) On request by the permittee, the department shall release all final bonds when, in accordance with the requirements of this chapter, the permittee successfully completes all prospecting, mining, and reclamation activities within the designated area.

(l) If the department disapproves the application for release of the bond or a portion of the bond, it shall:

(i) provide to the permittee detailed written findings demonstrating that the reclamation covered by the bond or a portion of the bond has not been accomplished as required by this part; and

(ii) recommend corrective actions necessary to secure the release and allowing opportunity for a public hearing.

(m) When an application for total or partial bond release is filed with the department, it shall notify the municipality or county in which a prospecting or mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(7) All disturbed areas must be reclaimed in a timely manner to conditions that are capable of supporting the land uses that they were capable of supporting prior to any mining or to higher or better uses as approved pursuant to subsection (8).

(8) (a) An operator may propose a higher or better use as an alternative postmining land use. If the landowner is not the operator, the operator shall submit written documentation of the concurrence of the landowner or the land management agency with jurisdiction over the land. The department may approve the proposed alternative postmining land use only if it meets all of the following criteria:

(i) There is a reasonable likelihood for achievement of the alternative land use.

(ii) The alternative land use does not present any actual or probable hazard to the public health or safety or any threat of water diminution or pollution.

(iii) The alternative land use will not:

(A) be impractical or unreasonable;

(B) be inconsistent with applicable land use policies or plans;

(C) involve unreasonable delay in implementation; or

(D) cause or contribute to violation of federal, state, or local law.

(b) As used in this section, the term "landowner" includes a person who has sold the surface estate to the operator with an option to repurchase the surface estate after mining and reclamation are complete.

(9) The reclamation plan must incorporate appropriate wildlife habitat enhancement features that are integrated with cropland, grazing land, pastureland, land occasionally cut for hay, or other uses in order to enhance habitat diversity, with emphasis on big game animals, game birds, and threatened and endangered species that have been documented to live in the area of land affected, and to enhance wetlands and riparian areas along rivers and streams and bordering ponds and lakes. Incorporation of wildlife habitat enhancement features does not constitute a change in land use to fish and wildlife habitat and may not interfere with the designated land use.

(10) Facilities existing prior to mining, including but not limited to public roads, utility lines, railroads, or pipelines, may be replaced as part of the reclamation plan. *(Certain 2025 amendments void on occurrence of contingency—sec. 3, Ch. 326, L. 2025—see compiler's comment.)*

History: En. Sec. 11, Ch. 325, L. 1973; amd. Sec. 23, Ch. 441, L. 1975; amd. Sec. 3, Ch. 352, L. 1977; R.C.M. 1947, 50-1044; amd. Sec. 1, Ch. 172, L. 1979; amd. Sec. 12, Ch. 550, L. 1979; amd. Sec. 1, Ch. 288, L. 1985; amd. Sec. 143, Ch. 370, L. 1987; amd. Sec. 374, Ch. 418, L. 1995; amd. Sec. 292, Ch. 42, L. 1997; amd. Sec. 6, Ch. 204, L. 2003; amd. Sec. 7, Ch. 127, L. 2005; amd. Sec. 1, Ch. 425, L. 2007; amd. Sec. 91, Ch. 324, L. 2021; amd. Sec. 2, Ch. 337, L. 2021; amd. Sec. 1, Ch. 326, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 326, L. 2025. Amendment effective May 1, 2025, and void on occurrence of contingency.

Contingent Voidness: Section 3, Ch. 326, L. 2025, provided: "(1) If the provisions of [this act] are disapproved by the United States secretary of the interior pursuant to 30 CFR 732, then [this act] is void.

(2) Within 15 days of the effective date of a disapproval pursuant to subsection (1), the department of environmental quality shall notify the code commissioner, certifying that the disapproval has occurred."

Cross-References

Water quality control, Title 75, ch. 5.
Policy — findings, 82-4-202.
Bond required, 82-4-223.
Release of remaining bond, 82-4-235.

82-4-233. Planting of vegetation following grading of disturbed area. (1) The operator shall establish on regraded areas and on all other disturbed areas, except water areas, surface areas of roads, and other constructed features approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is:

(a) diverse, effective, and permanent;

(b) composed of species native to the area or of introduced species when desirable and necessary to achieve the postmining land use and when approved by the department;

(c) at least equal in extent of cover to the natural vegetation of the area; and

(d) capable of stabilizing the soil surface in order to control erosion to the extent appropriate for the approved postmining land use.

(2) The reestablished plant species must:

(a) be compatible with the approved postmining land use;

(b) have the same seasonal growth characteristics as the original vegetation;

(c) be capable of self-regeneration and plant succession;

(d) be compatible with the plant and animal species of the area; and

(e) meet the requirements of applicable seed, poisonous and noxious plant, and introduced species laws or regulations.

(3) Reestablished vegetation must be appropriate to the postmining land use so that when the postmining land use is:

(a) cropland, the requirements of subsections (1)(a), (1)(c), (2)(b), and (2)(c) are not applicable;

(b) pastureland or grazing land, reestablished vegetation must have use for grazing by domestic livestock at least comparable to premining conditions or enhanced when practicable;

(c) fish and wildlife habitat, forestry, or recreation, trees and shrubs must be planted to achieve appropriate stocking rates.

(4) All underground shafts, tunnels, or other excavations are excluded from the provisions of subsection (1).

History: En. Sec. 12, Ch. 325, L. 1973; amd. Sec. 24, Ch. 441, L. 1975; R.C.M. 1947, 50-1045; amd. Sec. 2, Ch. 172, L. 1979; amd. Sec. 4, Ch. 196, L. 1997; amd. Sec. 7, Ch. 204, L. 2003; amd. Sec. 8, Ch. 127, L. 2005.

82-4-234. Commencement of reclamation. The operator shall commence the reclamation of the area of land affected by the operator's operation as soon as possible after the beginning of strip mining or underground mining of that area in accordance with plans previously approved by the department. Those grading, backfilling, subsidence stabilization, topsoiling, and water management practices that are approved in the plans must be kept current with the operation as defined by rules of the department, and a permit or supplement to a permit may not be issued if, in the discretion of the department, these practices are not current.

History: En. Sec. 13, Ch. 325, L. 1973; amd. Sec. 25, Ch. 441, L. 1975; R.C.M. 1947, 50-1046; amd. Sec. 3, Ch. 196, L. 1979; amd. Sec. 8, Ch. 204, L. 2003; amd. Sec. 92, Ch. 324, L. 2021.

82-4-235. Determination of successful revegetation — final bond release. (1) Success of revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233. Standards for success are:

(a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved prior to mining based on comparison with historical data, comparable reference areas, or United States department of agriculture publications applicable to the area of the operation, as referenced in rules adopted by the department;

(b) for areas reclaimed for use as pastureland or grazing land, the ground cover and production of living plants on the revegetated area must be at least equal to that of a reference area or other standard approved by the department as appropriate for the postmining land use;

(c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of revegetation must be determined on the basis of approved tree density standards or shrub density standards, or both, and vegetative ground cover required to achieve the postmining land use;

(d) reestablished vegetation is considered effective if the postmining land use is achieved and erosion is controlled;

(e) reestablished vegetation is considered permanent if it is diverse and effective at the end of the 10-year responsibility period specified under subsection (2); and

(f) plant species composing the reestablished vegetation are considered to have the same seasonal characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to be compatible with the plant and animal species of the area if those plant species are native to the area or are introduced species approved by the department as desirable and necessary to achieve the postmining land use.

(2) Inspection and evaluation of reclaimed vegetative cover must be made as soon as possible following an application for final bond release to determine if a satisfactory stand has been established. If the department determines that a satisfactory vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice

and an opportunity for hearing as provided in 82-4-232(6). Except as provided in subsection (3), the remaining bond may not be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.

(3) (a) Vegetative cover of water management facilities and other support facilities composing no more than 10% of the area for which bond release is sought is not subject to the 10-year responsibility period. Water management facilities and other support facilities include sedimentation ponds, diversions, other water management structures, soils stockpiles, and access roads.

(b) Vegetative cover of water management facilities and other support facilities composing no more than 10% of the area for which bond release is sought is eligible for bond release if the vegetative cover otherwise meets the reclamation standards in subsection (1).

(4) (a) Notwithstanding the provisions of subsections (2) and (3), on land from which coal was removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed in connection with this part after May 2, 1978, pursuant to a permit issued by the department under this part, the department may approve for release a bond on an area of reclaimed vegetation that meets the following criteria:

(i) it was seeded using a seed mixture that was approved by the department under the criteria established pursuant to 82-4-233 and that included introduced species; and

(ii) at least one of the following conditions exists:

(A) the standards of 82-4-233(1) are otherwise achieved;

(B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of livestock;

(C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat component for wildlife present in the area; or

(D) the topography and soils are suitable for conversion to cropland or hayland consistent with the standards of 82-4-232 and the department approves and the operator completes that conversion.

(b) On lands that meet the criteria described in subsection (4)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection (2).

History: **En. Sec. 14, Ch. 325, L. 1973; R.C.M. 1947, 50-1047; amd. Sec. 4, Ch. 196, L. 1979; amd. Sec. 13, Ch. 550, L. 1979; amd. Sec. 1, Ch. 193, L. 1995; amd. Sec. 5, Ch. 196, L. 1997; amd. Sec. 9, Ch. 204, L. 2003; amd. Sec. 9, Ch. 127, L. 2005; amd. Sec. 1, Ch. 72, L. 2009; amd. Sec. 1, Ch. 84, L. 2011; amd. Sec. 93, Ch. 324, L. 2021.**

Cross-References

Planting report required for prospecting permit, 82-4-226(7).
Release of bond, 82-4-232(6).

82-4-236. Vegetation as property of landowner. All vegetation that is planted or seeded on the area of land affected as required by this part or rules adopted under this part becomes the property of the landowner after complete release of the bond, unless the operator and the landowner agree otherwise.

History: **En. Sec. 15, Ch. 325, L. 1973; R.C.M. 1947, 50-1048; amd. Sec. 10, Ch. 204, L. 2003.**

Cross-References

Release of bond, 82-4-232(6), 82-4-235.

82-4-237. Operator to file annual reports. (1) An operator shall file an annual report with the department on a date determined by the department. An annual report must include:

(a) the name and address of the operator and permit number or numbers; and

(b) a report with detail required by the department, supplemented with maps, cross sections, or other material indicating the extent to which mining operations have been carried out, the progress of all reclamation work, including the type of planting or seeding, mixture and amount of seed, date of planting or seeding, and area of land planted, and the number of acres affected.

(2) Upon receipt of the annual report, the department may request additional information and shall allow a reasonable opportunity for the operator to respond to the request.

(3) When problems are revealed by review of new information or as a result of field inspections, the department may order necessary changes in the mining and reclamation plans to ensure compliance with this part.

History: En. Sec. 6, Ch. 325, L. 1973; amd. Sec. 1, Ch. 221, L. 1975; amd. Sec. 19, Ch. 441, L. 1975; amd. Sec. 1, Ch. 352, L. 1977; R.C.M. 1947, 50-1039(2) thru (4); amd. Sec. 5, Ch. 196, L. 1979; amd. Sec. 1, Ch. 68, L. 1983; amd. Sec. 4, Ch. 98, L. 2013.

Cross-References

Annual report filed for prospecting permit, 82-4-226(7).

82-4-238. Successor operator. When one operator succeeds another at an uncompleted operation, either by sale, assignment, lease, or otherwise, the department may release the first operator from all liability under this part as to that particular operation if both operators have been issued a permit and have otherwise complied with the requirements of this part, and the successor operator assumes, as part of the obligation under this part, all liability for the reclamation of the area of land affected by the former operator.

History: En. Sec. 18, Ch. 325, L. 1973; R.C.M. 1947, 50-1051; amd. Sec. 2733, Ch. 56, L. 2009.

82-4-239. Reclamation. (1) The department may have reclamation work done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons. The department may construct, operate, and maintain plants for the control and treatment of water pollution resulting from mine drainage.

(2) Any funds or any public works programs available to the department must be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining and that have not been reclaimed and rehabilitated in accordance with the standards of this part. The department shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(3) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether the land has been strip- or underground-mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-mining practices. Upon request of the director of the department, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection. The action must be brought in the county in which the mine is located.

(4) (a) The department shall take the actions described in subsection (4)(b) when it makes a finding of fact that:

(i) land or water resources have been adversely affected by past coal-mining practices;

(ii) the adverse effects are at a stage at which, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

(iii) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(b) After giving notice by mail to the owner, if known, and any purchaser under contract for deed, if known, or, if neither is known, by posting notice on the premises and advertising in a newspaper of general circulation in the county in which the land lies, the agents, employees, or contractors of the department may enter on the property adversely affected by past coal-mining practices and on any other property necessary for access to the mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(c) Action taken under subsection (4)(b) is not an act of condemnation of property or of trespass, but rather is an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(5) (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal-mining practices on privately owned land, the department shall itemize the money expended and may file a statement of those expenses in the office of the clerk and recorder of the county in which the land lies, together with a notarized appraisal by an

independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal-mining practices if the money expended resulted in a significant increase in property value. The statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. A lien under this subsection (5)(a) may not be filed against the property of a person who owned the surface prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this part.

(b) The landowner may petition within 60 days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. The amount reported to be the increase in value of the premises constitutes the amount of the lien and must be recorded with the statement provided for in this section. Any party aggrieved by the decision may appeal as provided by law.

(c) The lien provided in this section must be recorded at the office of the county clerk and recorder. The statement constitutes a lien upon the land as of the date of the expenditure of the money and has priority as a lien second only to the lien of real estate taxes imposed upon the land.

(6) The department may acquire the necessary property by gift or purchase. A gift or purchase must be approved by the board of land commissioners. If the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) the property is necessary for successful reclamation;

(b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past strip- or underground-coal-mining practices; or

(ii) acquisition of coal refuse disposal sites and all coal refuse on the land will serve the purposes of this part because public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining practices.

History: **En. Sec. 20, Ch. 325, L. 1973; amd. Sec. 27, Ch. 441, L. 1975; R.C.M. 1947, 50-1053(part); amd. Sec. 14, Ch. 550, L. 1979; amd. Sec. 26, Ch. 526, L. 1983; amd. Sec. 375, Ch. 418, L. 1995; amd. Sec. 29, Ch. 361, L. 2003; amd. Sec. 1, Ch. 78, L. 2009; amd. Sec. 94, Ch. 324, L. 2021.**

Cross-References

Documents subject to recording, 7-4-2613.
Fees of County Clerk, 7-4-2631.
Condemnation for restoration declared public use, 70-30-102(16).
Liens generally, Title 71, ch. 3, part 1.

82-4-240. Reclamation of lands after bond forfeited. In keeping with the provisions of this part, the department may reclaim any affected lands with respect to which a bond has been forfeited.

History: **En. Sec. 21, Ch. 325, L. 1973; amd. Sec. 28, Ch. 441, L. 1975; R.C.M. 1947, 50-1054; amd. Sec. 2, Ch. 31, L. 1981; amd. Sec. 376, Ch. 418, L. 1995.**

82-4-241. Receipts paid into general fund — disposition of bond forfeiture money. (1) Except for bond forfeiture money, all fees, penalties, and other money available or paid to the department under the provisions of this part must be placed in the state treasury and credited to the general fund.

(2) Bond forfeiture money must be used to pay for expenses that the department incurs pursuant to 82-4-240.

(3) Funds held by the department as bond or as a result of bond forfeiture that are no longer needed for reclamation and for which the department is not able to locate a surety or other person who owns the funds after diligent search must be deposited in the state special revenue fund and credited to the environmental rehabilitation and response account provided for in 75-1-110.

History: **En. Sec. 19, Ch. 325, L. 1973; amd. Sec. 26, Ch. 441, L. 1975; R.C.M. 1947, 50-1052; amd. Sec. 3, Ch. 31, L. 1981; amd. Sec. 3, Ch. 338, L. 2001.**

Cross-References

Expenditure only upon legislative appropriation, Art. VIII, sec. 14, Mont. Const.; 17-8-101.

82-4-242. Funds received by department. The department may receive any federal funds, state funds, or any other funds for the reclamation of land affected by strip mining or underground mining.

History: **En. Sec. 20, Ch. 325, L. 1973; amd. Sec. 27, Ch. 441, L. 1975; R.C.M. 1947, 50-1053(part); amd. Sec. 377, Ch. 418, L. 1995.**

82-4-243. Subsidence. (1) The permittee of an underground coal mining operation shall:

(a) promptly repair or compensate for material damage to any occupied residential dwelling and related structures and to any noncommercial building resulting from subsidence caused by an underground coal mining operation. Repair of damage includes rehabilitation, restoration, or replacement. Compensation must be provided to the owner of the damaged property and must be in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to mining, of a noncancellable premium-prepaid insurance policy.

(b) promptly replace any drinking, domestic, or residential water supply from a well or spring that was in existence prior to the application for the permit pursuant to 82-4-222 and that has been affected by contamination, diminution, or interruption resulting from the underground coal mining operation.

(2) This section may not be construed to prohibit or interrupt an underground coal mining operation.

(3) This section does not abrogate, impair, or diminish any right or remedy granted under another provision of this part or any other law.

History: **En. Sec. 1, Ch. 196, L. 1997.**

82-4-244. Coal and uranium mine permitting and reclamation program account. (1) There is a coal and uranium mine permitting and reclamation program account within the special revenue fund established in 17-2-102.

(2) Each fiscal year, there must be deposited in the account the proceeds from the coal severance tax, as provided in 15-35-108, to be appropriated by the legislature to the department for the administration and enforcement of this part.

History: **En. Sec. 2, Ch. 280, L. 2007.**

82-4-245 through 82-4-249 reserved.

82-4-250. Operating permit revocation — permit transfer. (1) An operating permit that is revoked in accordance with this part does not terminate until 5 years after revocation or until substantial completion of seeding and planting on disturbed areas, whichever occurs earlier.

(2) A person may apply for the transfer of a revoked permit that has not terminated by submitting an application to the department that contains the information required for a permit applicant in 82-4-222(1)(b) through (1)(i). Upon receipt of an application from a person who is not precluded from holding a permit pursuant to this part, the department shall cease reclamation activities on the permit area.

(3) The department may not require the applicant to submit any additional information unless the department can show that significant changes in the environmental baseline data have occurred during the period of operation or since the revocation of the initial operating permit.

(4) The department may not prepare a review under 75-1-201 for a transfer unless the department can show that the operation has caused or may cause significant impacts that have not been analyzed previously in an environmental review document prepared pursuant to 75-1-201.

(5) The department shall process an application for transfer under the same timeframes as are provided in 82-4-231 for processing of permit applications.

(6) Except as provided in subsection (7), the department shall, after receipt of an application pursuant to subsections (2) through (5) and after public notice and opportunity for comment:

(a) transfer the operating permit to a new operator if the new operator provides proof of site ownership or control and adequate bonding as required by this part; and

(b) require as a condition of permit transfer that, prior to creating additional disturbance at the site, all preexisting permit deficiencies, including modifications necessary because of reclamation that has been conducted at the site, be corrected to the satisfaction of the department and that any preestablished environmental monitoring requirements continue.

(7) The department may not transfer any permit for which it can show that:

(a) the requirements of this part and the rules adopted under this part for operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, and reclamation of the affected area cannot be met;

(b) significant changes in the operating plan or reclamation plan are necessary; or

(c) the department would be precluded from issuing a permit to the applicant by 82-4-227(11) or (12).

(8) The department is not required to reimburse the former permittee or surety for funds expended for reclamation, monitoring, or site maintenance prior to permit transfer.

(9) This section does not apply to the revocation or transfer of an operating permit that authorizes mine operations on federal lands.

History: En. Sec. 1, Ch. 522, L. 2001.

82-4-251. Noncompliance — suspension of permits. (1) If it is determined on the basis of an inspection that the permittee is or that any condition or practice exists in violation of any requirement of this part or any permit condition required by this part that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources, the director of the department or an authorized representative shall immediately order cessation of the operation or the portion of the operation relevant to the condition, practice, or violation. The cessation order remains in effect until the director or an authorized representative determines that the condition, practice, or violation has been abated or until modified, vacated, or terminated by the director or an authorized representative pursuant to subsection (6). If the director or an authorized representative finds that the ordered cessation of the operation or any portion of the operation will not completely abate the imminent danger to the health or safety of the public or the significant and imminent environmental harm to land, air, or water resources, the director or the authorized representative shall, in addition to the cessation order, impose affirmative obligations requiring any steps that the director or the authorized representative considers necessary to abate the imminent danger or the significant environmental harm.

(2) When, on the basis of an inspection, the department determines that any permittee is in violation of any requirement of this part or any permit condition required by this part that does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant and imminent environmental harm to land, air, or water resources, the director or an authorized representative shall issue a notice to the permittee or the permittee's agent fixing a reasonable time, not exceeding 90 days, for the abatement of the violation and providing opportunity for public hearing. If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the director or an authorized representative, the director or an authorized representative finds that the violation has not been abated, the director or an authorized representative shall immediately order a cessation of the operation or the portion of the operation relevant to the violation. The cessation order remains in effect until the director or an authorized representative determines that the violation has been abated or until modified, vacated, or terminated by the director or an authorized representative pursuant to subsection (6). In the order of cessation issued under this subsection, the director shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order.

(3) (a) When, on the basis of an inspection, the director or an authorized representative determines that there is a minor maintenance item to be corrected, the director or the authorized

representative shall issue a minor maintenance correction letter to alert the permittee of the necessary correction and provide the permittee with an opportunity to correct the item within 14 days. During the next regular inspection, the director or the authorized representative shall verify that the necessary correction has been completed.

(b) A minor maintenance item:

(i) is a permit violation that does not create an imminent danger to the health or safety of the public, and the director or a director's designee determines the violation is not reasonably expected to cause significant and imminent environmental harm to land, air, or water resources;

(ii) may be reasonably corrected by the permittee within 14 days to the satisfaction of the director or a designee;

(iii) does not, at the discretion of the director or a designee, necessitate a cessation order or public hearing, as required in subsection (2); and

(iv) is within the permit boundary.

(c) If a permittee fails to correct the minor maintenance item within 14 days or by the next regular inspection, whichever is later, the director or the director's designee shall issue a notice of noncompliance or an order of cessation pursuant to subsections (1) and (2).

(4) When, on the basis of an inspection, the director or an authorized representative determines that a pattern of violations of any requirements of this part or any permit conditions required by this part exists or has existed and if the director or an authorized representative also finds that the violations are caused by the unwarranted failure of the permittee to comply with any requirements of this part or any permit conditions or that the violations are willfully caused by the permittee, the director or an authorized representative shall issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested, the director shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the director or an authorized representative shall suspend or revoke the permit. A permittee may request a contested case hearing on a permit suspension or revocation by filing a request for hearing, specifying the grounds for the request, within 30 days of receipt of the order of suspension or revocation. The order is effective upon expiration of the period for requesting a hearing or, if a hearing is requested, upon issuance of a final order by the board. The hearing must be conducted in accordance with the requirements of Title 2, chapter 4, part 6. When a permit has been revoked, the department may order the performance bond forfeited.

(5) Any additional permits held by an operator whose mining permit has been revoked must be suspended, and the operator is not eligible to receive another permit or to have the suspended permits reinstated until the operator has complied with all the requirements of this part with respect to former permits issued to the operator. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the department finds adequate to reclaim the lands.

(6) Notices and orders issued pursuant to this section must set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the operation to which the notice or order applies. Each notice or order issued under this section must be given promptly to the permittee or the permittee's agent by the department, by the director, or by the authorized representative who issued the notice or order. All notices and orders must be in writing and be signed by the authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the director or an authorized representative. However, any notice or order issued pursuant to this section that requires cessation of mining by the operator expires within 30 days of actual notice to the operator unless an informal public hearing, if requested by the person to whom the notice or order was issued, is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of the hearing. If the department receives a request for an informal public hearing 21 days after service of the notice or order, the period for holding the informal public hearing is extended by the number of days after the 21st day that the request was received.

(7) A person who has been issued a notice or an order of cessation pursuant to subsection (1) or (2) or a person who has an interest that is or may be adversely affected by an order issued pursuant to subsection (1) or (2) or by modification, vacation, or termination of that order may request a hearing before the board on that order within 30 days of its issuance or within 30 days of its modification, vacation, or termination. The filing of an application for review under this subsection may not operate as a stay of any order or notice. The board shall make findings of fact and issue a written decision incorporating an order vacating, affirming, modifying, or terminating the order.

(8) Subject to the provisions of 82-4-255, whenever an order is issued under this section or as the result of any administrative proceeding under this part, at the request of any person, a sum equal to the aggregate amount of all costs, expenses, and attorney fees as determined by the department to have been reasonably incurred by the person for or in connection with the person's participation in the proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the department, resulting from administrative proceedings, considers proper.

(9) In order to protect the stability of the land, the director or an authorized representative shall order cessation of underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if the director or the authorized agent finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities. *(Certain 2025 amendments void on occurrence of contingency—sec. 4, Ch. 201, L. 2025—see compiler's comment.)*

History: En. Sec. 17, Ch. 325, L. 1973; R.C.M. 1947, 50-1050; amd. Sec. 15, Ch. 550, L. 1979; amd. Sec. 4, Ch. 437, L. 1981; amd. Sec. 1, Ch. 162, L. 1983; amd. Sec. 378, Ch. 418, L. 1995; amd. Sec. 10, Ch. 127, L. 2005; amd. Sec. 2, Ch. 472, L. 2023; amd. Sec. 1, Ch. 201, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 201, L. 2025. Amendment effective April 17, 2025, and void on occurrence of contingency.

Contingent Voidness: Section 4, Ch. 201, L. 2025, provided: "(1) If any provision of [this act] is disapproved by the United States secretary of the interior pursuant to 30 CFR 732, then that portion of [this act] is void.

(2) Within 15 days of the effective date of the disapproval under subsection (1), the department of environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1) has occurred."

Cross-References

Willfully defined, 1-1-204.

Contested administrative cases, Title 2, ch. 4, part 6.

Appeal of contested administrative cases, Title 2, ch. 4, part 7.

Suspension and revocation of permits by Department, 82-4-205.

82-4-252. Mandamus. (1) A resident of this state or any person having an interest that is or may be adversely affected, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced or implemented by a public officer or employee whose duty it is to enforce or implement the requirement or rule, may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that must state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed in 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce or implement the requirement or rule, the resident or person having an interest that is or may be adversely affected may bring an action of mandamus in the district court of the county in which the land is located. The court, if it finds that a requirement of this part or a rule adopted under this part is not being enforced, shall order the public officer or employee whose duty it is to enforce the requirement or rule to perform the officer's or employee's duties. If the officer or employee fails to obey the order, the public officer or employee must be held in contempt of court and is subject to the penalties provided by law.

(3) Any person having an interest that is or may be adversely affected may commence a civil action on the person's own behalf to compel compliance with this part against any person for the violation of this part or any rule, order, or permit issued under this part. However, the action may not commence:

(a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged violator; or

(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part or any rule, order, or permit issued under this part.

Any person may intervene as a matter of right in the civil action. This section does not restrict any right that any person may have under any statute or common law to seek enforcement of this part or the rules adopted under this part or to seek any other relief.

(4) Any person who is injured in person or property through the violation by any operator of any rule, order, or permit issued pursuant to this part may bring an action for damages, including reasonable attorney and expert witness fees, only in the county in which the strip- or underground-coal-mining operation complained of is located. This subsection does not affect the rights established by or limits imposed under Title 39, chapter 71.

(5) The court, in issuing any final order in any action brought pursuant to subsection (3), may award costs of litigation, including attorney and expert witness fees, pursuant to 82-4-255. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Montana Rules of Civil Procedure.

History: **En. Sec. 22, Ch. 325, L. 1973; amd. Sec. 1, Ch. 295, L. 1975; amd. Sec. 29, Ch. 441, L. 1975; R.C.M. 1947, 50-1055(1), (2); amd. Sec. 3, Ch. 201, L. 1979; amd. Sec. 16, Ch. 550, L. 1979; amd. Sec. 192, Ch. 575, L. 1981; amd. Sec. 30, Ch. 361, L. 2003; amd. Sec. 3, Ch. 472, L. 2023.**

Cross-References

Knowingly defined, 1-1-204, 45-2-101.
Rules for determining residency, 1-1-215.
Contempts, Title 3, ch. 1, part 5.
Injunctions, Title 27, ch. 19.
Mandamus, Title 27, ch. 26.

82-4-253. Suit for damage to water supply. (1) An owner of an interest in real property who obtains all or part of a supply of water for domestic, agricultural, industrial, or other legitimate use from an underground source other than a subterranean stream having a permanent, distinct, and known channel may sue an operator to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from strip mining or underground mining.

(2) Prima facie evidence of injury in a suit under this section is established by the removal of coal or disruption of overlying aquifer from designated ground water areas as prescribed in Title 85, chapter 2, part 5. If the area is not a designated ground water area, a showing that the coal or overlying strata is an aquifer in that geographical location and that the coal or the overlying strata has been removed or disrupted shifts the burden to the defendant (operator) to show that the plaintiff's (owner's) water supply was not injured thereby.

(3) An owner of water rights adversely affected may file a complaint detailing the loss of water in quality and quantity with the department. Upon receipt of this complaint the department shall:

(a) investigate the complaint using all available information including monitoring data gathered at the mine site;

(b) require the defendant (operator) to install monitoring wells or other practices that may be needed to determine the cause of water loss, if there is a loss, in terms of quantity or quality;

(c) issue within 90 days a written finding specifying the cause of the water loss, if there is a loss, in terms of quantity or quality;

(d) order the mining operator in compliance with chapter 2 of Title 85 to replace the water immediately on a temporary basis to provide the needed water and within a reasonable time, replace the water in like quality, quantity, and duration, if the loss is caused by the strip-mining or underground-coal-mining operation; and

(e) order the suspension of the operator's permit for failure to replace the water, until such time as the operator provides substitute water.

(4) A servient tract of land is not bound to receive surface water contaminated by strip mining or underground mining on a dominant tract of land, and the owner of the servient tract may sue an operator to recover the damages proximately resulting from the natural drainage from the dominant tract of surface waters contaminated by strip mining or underground mining on the dominant tract.

(5) This section and 82-4-252 do not create, modify, or affect any right, liability, or remedy other than as expressly provided.

History: **En. Sec. 22, Ch. 325, L. 1973; amd. Sec. 1, Ch. 295, L. 1975; amd. Sec. 29, Ch. 441, L. 1975; R.C.M. 1947, 50-1055(3) thru (5); amd. Sec. 293, Ch. 42, L. 1997; amd. Sec. 5, Ch. 98, L. 2013.**

Cross-References

Damages, Title 27, ch. 1, part 2.
Measure of damages, Title 27, ch. 1, part 3.
Authority of Department of Environmental Quality to establish water quality standards, 75-5-301.
Authority of Department of Environmental Quality to require monitoring of industry waste waters, 75-5-602.
Waste and contamination of ground water prohibited, 85-2-505.

82-4-254. Violation — penalty — waiver. (1) (a) Except as provided in subsection (2), a person or operator who violates any of the provisions of this part, rules adopted or orders issued under this part, or term or condition of a permit and any director, officer, or agent of a corporation who purposely or knowingly authorizes, orders, or carries out a violation shall pay an administrative penalty of not less than $100 or more than $5,000 for the violation and an additional administrative penalty of not less than $100 or more than $5,000 for each day during which a violation continues and may be enjoined from continuing the violations as provided in this section. A person or operator who fails to correct a violation within the period permitted by law, rule, or order of the department must be assessed a penalty of not less than $750 for each day, up to 30 days, during which the failure or violation continues.

(b) Penalties assessed under this section must be determined in accordance with the penalty factors in 82-4-1001.

(c) The period permitted for correction of a violation does not, in the case of any review proceeding under 82-4-251(7), end until entry of a final order suspending the abatement requirements or until entry of an order of court ordering suspension of the abatement requirements. If the failure to abate continues for more than 30 days, the department shall, within 30 days after the 30-day period, take appropriate action pursuant to 82-4-251(4) or request action under subsection (4) or (6) of this section.

(2) The department may waive the penalty for a minor violation of this part, a rule adopted or an order issued under this part, or a term or condition of a permit if the department determines that the violation is not of potential harm to public health, public safety, or the environment and does not impair the administration of this part. The department may not waive a penalty assessed under this section if the person or operator fails to abate the violation as directed under 82-4-251. The department shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(3) (a) To assess an administrative penalty under this section, the department shall issue a notice of violation and penalty order to the person or operator, unless the penalty is waived pursuant to subsection (2). The notice and order must specify the provision of this part, rule adopted or order issued under this part, or term or condition of a permit that is violated and must contain findings of fact, conclusions of law, and a statement of the proposed administrative penalty. The notice and order must be served personally or by certified mail. Service by mail is complete 3 business days after the date of mailing. The notice and order become final unless, within 30 days after the order is served, the person or operator to whom the order was issued requests a hearing before the board. By submitting to the board a written request within 30 days of service of the notice of violation, stating the reason for the request, the person or operator is entitled to a hearing before the board under 82-4-206 on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. On receipt of a request, the board shall schedule a hearing. After a hearing, the board shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of penalty warranted. If the board finds that the violation occurred and a penalty is warranted, it shall order the payment of the penalty. If the time for requesting a hearing expires without a hearing request, the person or operator shall remit the amount of the penalty within 30 days of the expiration of the period for requesting a hearing.

(b) If the person or operator to whom a final order is issued under subsection (3)(a) wishes to obtain judicial review of the order, the person or operator shall submit with any assessed penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. Any person or operator who fails to request and submit testimony at the hearing provided for in subsection (3)(a) or who fails to pay any assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation and penalty determinations.

(c) Penalties provided for in this section are recoverable in an action brought by the department. The action must be filed in the district court having jurisdiction over the defendant or in the first judicial district if no other district court has jurisdiction.

(4) The department may bring an action for a restraining order or temporary or permanent injunction against an operator or other person who:

(a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under this part;

(b) interferes with, hinders, or delays the department in carrying out the provisions of this part;

(c) refuses to admit an authorized representative of the department to the permit area;

(d) refuses to permit inspection of the permit area by an authorized representative of the department;

(e) refuses to furnish any information or report requested by the department in furtherance of the provisions of this part; or

(f) refuses to permit access to and copying of records that the department determines to be necessary in carrying out the provisions of this part.

(5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion or final termination of all proceedings for review of relief granted under this part unless, prior to the final determination, the district court granting the relief sets it aside or modifies it.

(6) A person who violates any of the provisions of this part or any determination or order issued under this part or who purposely or knowingly violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined an amount not less than $500 and not more than $10,000 or be imprisoned for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(7) A person who knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall upon conviction be punished by a fine of not more than $10,000 or by imprisonment for not more than 1 year, or both.

(8) A person who except as permitted by law purposely or knowingly resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than $5,000 or imprisonment for not more than 1 year, or both.

(9) An employee of the department performing any function or duty under this part may not have a direct or indirect financial interest in any strip- or underground-coal-mining operation. A person who knowingly violates the provisions of this subsection shall upon conviction be punished by a fine of not more than $2,500 or by imprisonment of not more than 1 year, or both.

(10) Within 30 days after receipt of full payment of an administrative penalty assessed under this section, the department shall issue a written release of civil liability for the violations for which the penalty was assessed. *(Certain 2025 amendments void on occurrence of contingency—sec. 4, Ch. 201, L. 2025—see compiler's comment.)*

History: **En. Sec. 23, Ch. 325, L. 1973; R.C.M. 1947, 50-1056; amd. Sec. 17, Ch. 550, L. 1979; amd. Sec. 5, Ch. 437, L. 1981; amd. Sec. 1, Ch. 499, L. 1983; amd. Sec. 1, Ch. 24, L. 1985; amd. Sec. 1, Ch. 217, L. 1985; amd. Sec. 379, Ch. 418, L. 1995; amd. Sec. 294, Ch. 42, L. 1997; amd. Sec. 10, Ch. 79, L. 2001; amd. Sec. 1, Ch. 486, L. 2005; amd. Sec. 25, Ch. 487, L. 2005; amd. Sec. 95, Ch. 324, L. 2021; amd. Sec. 47, Ch. 535, L. 2021; amd. Sec. 2, Ch. 201, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 201, L. 2025. Amendment effective April 17, 2025, and void on occurrence of contingency.

Contingent Voidness: Section 4, Ch. 201, L. 2025, provided: "(1) If any provision of [this act] is disapproved by the United States secretary of the interior pursuant to 30 CFR 732, then that portion of [this act] is void.

(2) Within 15 days of the effective date of the disapproval under subsection (1), the department of environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1) has occurred."

Cross-References

Knowingly defined, 1-1-204, 45-2-101.

Willfully defined, 1-1-204.

Contested administrative cases, Title 2, ch. 4, part 6.

Appeal of contested administrative cases, Title 2, ch. 4, part 7.
Injunctions, Title 27, ch. 19.
Criminal responsibilities of corporations, 45-2-311.
Place of imprisonment when none specified, 46-18-211.
Disposition of fines and forfeitures, 46-18-603, 82-4-241.
Person defined, 82-4-203.
Penalties, fees, and interest, Title 82, ch. 4, part 10.

82-4-255. Equal application of court costs. (1) Unless the context requires otherwise, a court or administrative agency that issues a final order in an action pursuant to Title 82, chapter 4, part 2, may award the prevailing party reasonable costs of litigation, including filing fees, attorney fees, and witness costs.

(2) In awarding costs pursuant to this section, the court or administrative agency may not consider the identity of any party, including but not limited to a permittee, permit applicant, agency, public interest litigant, or other party to an action. The party requesting costs bears the burden of proof and persuasion.

(3) This section supersedes prior rulings pursuant to the private attorney general doctrine.

(4) The provisions of this section apply equally to all parties in an action pursuant to this part.

History: **En. Sec. 1, Ch. 472, L. 2023.**

Part 3
Metal Mine Reclamation

Part Cross-References
Reclamation, Art. IX, sec. 2, Mont. Const.
Prospecting permits and mining leases on state lands, Title 77, ch. 3, part 1.
Landowner notification of surface operations, Title 82, ch. 2, part 3.

82-4-301. Legislative intent and findings. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted this part.

(2) It is the legislature's intent that:

(a) the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources;

(b) tailings storage facilities are designed, operated, monitored, and closed in a manner that:

(i) meets state-of-practice engineering design standards;

(ii) uses applicable, appropriate, and current technologies and techniques as are practicable given site-specific conditions and concerns; and

(iii) provides protection of human health and the environment; and

(c) the regulation of tailings storage facilities is not prescriptive in detail but allows for adaptive management using evolving best engineering practices based on the recommendations of qualified, experienced engineers.

(3) The extraction of mineral by mining is a basic and essential activity making an important contribution to the economy of the state and the nation. At the same time, proper reclamation of mined land and former exploration areas not brought to mining stage is necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state. Mining and exploration for minerals take place in diverse areas where geological, topographical, climatic, biological, and sociological conditions are significantly different, and the specifications for reclamation and tailings storage facilities must vary accordingly. It is not practical to extract minerals or explore for minerals required by our society without disturbing the surface or subsurface of the earth and without producing waste materials, and the very character of many types of mining operations precludes complete restoration of the land to its original condition. The legislature finds that land reclamation and tailings storage as provided in this part will allow exploration for and mining of valuable minerals while adequately providing for the subsequent beneficial use of the lands to be reclaimed.

(4) The legislature finds that the mining of rock products from or just below the ground surface not containing sulfides is subject to fewer permitting requirements than other minerals because:

(a) the mining of nonsulfide rock products from or just below the ground surface creates fewer and more limited environmental concerns than the mining of other minerals;

(b) nonsulfide rock products are typically used in their natural state and not subject to chemical processing; and

(c) water quality and quantity are not significantly affected by mining of nonsulfide rock products from or just below the ground surface.

History: En. Sec. 1, Ch. 252, L. 1971; R.C.M. 1947, 50-1201; amd. Sec. 31, Ch. 361, L. 2003; amd. Sec. 1, Ch. 399, L. 2015; amd. Sec. 1, Ch. 152, L. 2021.

82-4-302. Purpose. (1) The purposes of this part are to:

(a) fulfill the responsibilities and exercise the powers delegated by Article IX, section 1(3) and 2(1) of the Montana constitution;

(b) allow mining as an activity beneficial to the economy of Montana;

(c) allow the production of minerals to meet the needs of society and the economic demands of the marketplace;

(d) provide for reclamation that mitigates postreclamation visual contrasts between reclamation lands and adjacent lands;

(e) provide for reclamation that affords some utility to humans or the environment;

(f) prevent foreclosure of future access to mineral resources not fully developed by current mining operations;

(g) mitigate or prevent undesirable offsite environmental impacts; and

(h) provide authority for cooperation between private and governmental entities in carrying this part into effect.

(2) Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to establish, on a continuing basis, the vegetative cover, soil stability, water condition, and safety condition appropriate to any proposed subsequent use of the area.

History: En. Sec. 2, Ch. 252, L. 1971; R.C.M. 1947, 50-1202; amd. Sec. 1, Ch. 7, Sp. L. May 2000.

82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Amendment" means a change to an approved operating or reclamation plan. A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that will not significantly affect the human environment.

(3) "Board" means the board of environmental review provided for in 2-15-3502.

(4) "Certification" means, with regard to tailings storage facilities, a statement of opinion by a professional engineer that the work on a tailings storage facility has been conducted in accordance with the normal standard of care within dam engineering practice. Certification does not constitute a warranty or guarantee of facts or conditions certified.

(5) "Completeness" means that an application contains information addressing each applicable permit requirement as listed in this part or rules adopted pursuant to this part in sufficient detail for the department to make a decision as to adequacy of the application to meet the requirements of this part.

(6) "Constructor" means the company or companies constructing the built components of a tailings storage facility, including but not limited to embankment dams, surface water diversion structures, tailings distribution systems, reclaim water systems, and monitoring instrumentation.

(7) "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.

(8) "Department" means the department of environmental quality provided for in 2-15-3501.

(9) "Disturbed land" means the area of land or surface water that has been disturbed, beginning at the date of the issuance of the permit. The term includes the area from which the

overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, load-out facilities, leach dumps, and all similar excavations or coverings that result from the operation and that have not been previously reclaimed under the reclamation plan.

(10) "Engineer of record" means a qualified engineer who is the lead designer for a tailings storage facility.

(11) "Expansion" means, with regard to tailings storage facilities, a change in the size, height, or configuration of or a contiguous addition to an existing tailings storage facility that increases or may increase the storage capacity of the impoundment above the currently permitted capacity.

(12) "Exploration" means:

(a) all activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation; and

(b) all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

(13) "Independent review panel member" means:

(a) a licensed engineer who is a recognized expert in tailings storage facility design, construction, operation, and closure; or

(b) a person who has the education, experience, and qualifications sufficient to be considered a recognized subject matter expert in technical disciplines relevant to tailings storage facility design, construction, operation, and closure who is not a licensed engineer.

(14) "Material deviation" means a failure to follow a condition in a design document, corrective action plan, schedule, or tailings operation, maintenance, and surveillance manual that could reasonably be expected to substantively impair a tailings storage facility from performing as intended.

(15) "Maximum credible earthquake" means the most severe earthquake that can be expected at a site based on geologic and seismological evidence, including a review of all historic earthquake data of events sufficiently nearby to influence the site, all faults in the area, and attenuations from causative faults to the site.

(16) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium, that is taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(17) "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of the aggregate of 10,000 short tons.

(18) "Observational method" means a continuous, managed, and integrated process of design, construction control, monitoring, and review enabling appropriate, previously defined modifications to be incorporated during and after construction.

(19) "Operator" means a person who has an operating permit issued under 82-4-335.

(20) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

(21) "Panel" means the tailings storage facility independent review panel created for each new or expanded tailings storage facility.

(22) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

(23) "Placer deposit" means:

(a) naturally occurring, scattered, or unconsolidated valuable minerals in gravel, glacial, eolian, colluvial, or alluvial deposits lying above bedrock; or

(b) all forms of deposit except veins of quartz and other rock in place.

(24) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.

(25) "Practicable" means available and capable of being implemented after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

(26) "Professional engineer" means a registered professional engineer licensed to practice in Montana under Title 37, chapter 67, part 3.

(27) "Qualified engineer" means a professional engineer who has a minimum of 10 years of direct experience with the design and construction of tailings storage facilities and has the appropriate professional and educational credentials to effectively determine appropriate parameters for the safe design, construction, operation, and closure of a tailings storage facility.

(28) "Reclamation plan" means the operator's written proposal, as required and approved by the department, for reclamation of the land that will be disturbed. The proposal must include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation, which may include use of the land as an industrial site not necessarily related to mining;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas when necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) maps and other supporting documents that may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

(29) (a) "Rock products" means decorative rock, building stone, riprap, mineral aggregates, and other minerals produced by typical quarrying activities or collected from or just below the ground surface that do not contain sulfides with the potential to produce acid, toxic, or otherwise pollutive solutions.

(b) The term does not include talc, gypsum, limestone, metalliferous ores, gemstones, or materials extracted by underground mining.

(30) (a) "Small miner" means a person, firm, or corporation that engages in mining activity that is not exempt from this part pursuant to 82-4-310, that engages in the business of reprocessing of tailings or waste materials, that, except as provided in 82-4-310, knowingly allows other persons to engage in mining activities on land owned or controlled by the person, firm, or corporation, that does not hold an operating permit under 82-4-343 or 82-4-335 except for a permit issued under 82-4-335(2) or an operating permit that meets the criteria of subsection (30)(c) of this section, and that conducts:

(i) an operation that results in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations that disturb and leave unreclaimed less than 5 acres for each operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation; and

(B) at least 1 mile apart at their closest point.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation:

(i) exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases; and

(ii) exclude access roads for which the person, firm, or corporation submits a bond to the department in the amount of the estimated total cost of reclamation along with a description of the location of the road and the specifications to which it will be constructed.

(c) A small miner may hold an operating permit that allows disturbance of 100 acres or less. The permit may be amended to add new disturbance areas, but the total area permitted for disturbance may not exceed 100 acres at any time.

(31) "Soil materials" means earth material found in the upper soil layers that will support plant growth.

(32) (a) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining.

(b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other onsite building construction.

(33) "Tailings" means the residual materials remaining after a milling process that separates the valuable fraction from the uneconomic fraction of an ore mined by an operator.

(34) (a) "Tailings storage facility" means a facility that temporarily or permanently stores tailings, including the impoundment, embankment, tailings distribution works, reclaim water works, monitoring devices, storm water diversions, and other ancillary structures.

(b) The term does not include:

(i) a facility that stores 50 acre-feet or less of the aggregate of tailings, water, and process solution;

(ii) a facility that is wholly contained below surrounding grade with no man-made structures retaining tailings, water, or process solution;

(iii) a facility that is partially below the surrounding grade and partially above the surrounding grade if the portion of the facility that is above the surrounding grade retains 50 acre-feet or less in the aggregate of tailing, water, and process solution; or

(iv) the portion of tailings used as underground backfill at an underground mine.

(35) "Underground mining" means all methods of mining other than surface mining.

(36) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit. The term includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations that by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

(37) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation.

History: En. Sec. 3, Ch. 252, L. 1971; amd. Sec. 1, Ch. 281, L. 1974; amd. Sec. 13, Ch. 39, L. 1977; amd. Sec. 1, Ch. 423, L. 1977; R.C.M. 1947, 50-1203; amd. Sec. 1, Ch. 588, L. 1979; amd. Sec. 1, Ch. 386, L. 1985; amd. Sec. 1, Ch. 453, L. 1985; amd. Sec. 1, Ch. 93, L. 1989; amd. Sec. 1, Ch. 346, L. 1989; amd. Sec. 1, Ch. 347, L. 1989; amd. Sec. 1, Ch. 283, L. 1991; amd. Sec. 1, Ch. 637, L. 1991; amd. Sec. 4, Ch. 472, L. 1993; amd. Sec. 380, Ch. 418, L. 1995; amd. Sec. 1, Ch. 272, L. 1997; amd. Sec. 1, Ch. 507, L. 1999; amd. Sec. 1, Ch. 488, L. 2001; amd. Sec. 1, Ch. 365, L. 2003; amd. Sec. 1, Ch. 63, L. 2005; amd. Sec. 1, Ch. 410, L. 2011; amd. Sec. 2, Ch. 399, L. 2015; amd. Sec. 2, Ch. 152, L. 2021; amd. Sec. 1, Ch. 504, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 504, L. 2025. Amendment effective May 8, 2025.

82-4-304. Exemption — works performed prior to promulgation of rules. This part is not applicable to any exploration or mining work performed prior to the date of promulgation of the initial rules pursuant to 82-4-321 relating to exploration and mining. This part is not applicable to the reprocessing of tailings or waste rock that occurred prior to the date of promulgation of the initial rules regarding those activities. If, after the date of promulgation of initial rules applicable to mills not located at a mine site, work is performed at a mill that does not use cyanide ore-processing reagent and that was constructed and operated before promulgation of those rules, this part applies only to the areas initially disturbed after promulgation of those rules.

History: En. Sec. 19, Ch. 252, L. 1971; R.C.M. 1947, 50-1219; amd. Sec. 4, Ch. 201, L. 1979; amd. Sec. 2, Ch. 453, L. 1985; amd. Sec. 1, Ch. 204, L. 1995; amd. Sec. 96, Ch. 324, L. 2021.

Cross-References

Adoption and publication of administrative rules, Title 2, ch. 4, part 3.

82-4-305. Exemption — small miners — written agreement. (1) Except as provided in subsections (3) through (12), the provisions of this part do not apply to a small miner if the small miner annually submits a $100 administrative fee and agrees in writing:

(a) that the small miner will not pollute or contaminate any stream;

(b) that the small miner will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;

(c) that the small miner will provide a map locating the miner's mining operations. The map must be of a size and scale determined by the department.

(d) if the small miner's operations are placer or dredge mining, that the small miner shall salvage and protect all soil materials for use in reclamation of that site and shall reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas.

(2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain or continue an exemption under subsection (1) unless the small miner annually certifies in writing:

(a) if the small miner is an individual, that:

(i) no business association or partnership of which the small miner is a member or partner has a small-miner exemption; and

(ii) no corporation of which the small miner is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or

(b) if the small miner is a partnership or business association, that:

(i) none of the associates or partners holds a small-miner exemption; and

(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

(ii) is a member or partner in a business association or partnership that holds a small-miner exemption; or

(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

(3) A small miner whose operations are placer or dredge mining shall post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land, although the bond may not exceed $10,000 for each operation. If the small miner has posted a bond for reclamation with another government agency, the small miner is exempt from the requirement of this subsection.

(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, the small miner is liable to the department for all of its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation

exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

(6) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (5), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(7) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation in which the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of. The acreage disturbed by the operation using cyanide ore-processing reagents or other metal leaching solvents or reagents and covered by the operating permit is excluded from the 5-acre limit specified in 82-4-303(30)(a)(i) and (30)(a)(ii).

(8) (a) Except for a small miner proposing to conduct a placer or dredge mining operation, a small miner who intends to use an impoundment to store waste from ore processing shall obtain approval for the design, construction, operation, and reclamation of that impoundment and post a performance bond for that part of the small miner's operation before constructing an impoundment. The small miner shall post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land. If the small miner has posted a bond for reclamation of that site with a federal government agency, the small miner is exempt from the requirements of this subsection (8)(a).

(b) The department shall conduct a review of the adequacy of the bond posted by a small miner using an impoundment pursuant to this section at least once every 5 years and adjust the bond if necessary to ensure reclamation of the impoundment. The acreage disturbed by the portion of the operation that uses an impoundment to store waste from ore processing is included in the 5-acre limit specified in 82-4-303(30)(a)(i) and (30)(a)(ii) and is subject to the provisions of this subsection (8).

(c) If a small miner under this subsection (8) fails to reclaim the operation, the small miner is liable to the department for all of its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(d) If a small miner under this subsection (8) fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (8)(e), before or after it incurs those costs.

(e) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (8)(d), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(f) Except for a small miner who conducts a placer or dredge mining operation, a small miner utilizing an impoundment to store waste from ore processing on or after April 28, 2005, shall obtain approval of the design, construction, operation, and reclamation of that impoundment and post a performance bond within 6 months of April 28, 2005. If the small miner has posted a bond for reclamation of that site with a federal government agency, the small miner is exempt from the requirements of this subsection (8)(f).

(9) The exemption provided in this section does not apply to a person:

(a) whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described under 82-4-360;

(b) who has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) who has failed to post a reclamation bond required by this section, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or

(d) who has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(10) The exemption provided in this section does not apply to an area:

(a) under permit pursuant to 82-4-335;

(b) that has been permitted pursuant to 82-4-335 and reclaimed by the permittee, the department, or any other state or federal agency; or

(c) that has been reclaimed by or has been subject to remediation of contamination or pollution by a public agency, under supervision of a public agency, or using public funds.

(11) A small miner may not use mercury except in a contained facility that prevents the escape of any mercury into the environment.

(12) If a small miner fails to meet the annual reporting requirement in this section on or before March 1 of each year, the small miner shall pay a late fee of $100 in addition to the $100 administrative fee.

History: En. Sec. 20, Ch. 252, L. 1971; amd. Sec. 15, Ch. 391, L. 1973; amd. Sec. 10, Ch. 281, L. 1974; R.C.M. 1947, 50-1220; amd. Sec. 2, Ch. 588, L. 1979; amd. Sec. 2, Ch. 386, L. 1985; amd. Sec. 2, Ch. 93, L. 1989; amd. Sec. 2, Ch. 346, L. 1989; amd. Sec. 2, Ch. 347, L. 1989; amd. Sec. 2, Ch. 637, L. 1991; amd. Sec. 1, Ch. 598, L. 1993; amd. Sec. 1, Ch. 329, L. 1995; amd. Sec. 2, Ch. 272, L. 1997; amd. Sec. 2, Ch. 507, L. 1999; amd. Sec. 2, Ch. 63, L. 2005; amd. Sec. 1, Ch. 505, L. 2005; amd. Sec. 2, Ch. 410, L. 2011; amd. Sec. 3, Ch. 399, L. 2015; amd. Sec. 2, Ch. 634, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 634, L. 2025. Amendment effective July 1, 2025.

Cross-References

Mining and exploration activity prohibited if bond forfeited — exception, 82-4-360.

Penalty for violation of conditions of small-miner exemption, 82-4-361.

82-4-306. Confidentiality of application information. (1) Except as provided in subsections (2) and (3), the information obtained by the department from applications for exploration licenses and the information obtained from small miners is confidential between the department and the applicant, except for the name of the applicant and the county of proposed operation. However, all activities conducted subsequent to exploration and other associated facilities are public information and must be conducted under an operating permit.

(2) Any information referenced in subsection (1) is properly admissible in any hearing conducted by the department or in any judicial proceeding to which the director and the applicant are parties and is not confidential when a violation of this part or rules adopted under this part has been determined by the department or by judicial order.

(3) The department may disclose information obtained by the department from exploration license applications and from small miners and that is related to the exploration or mining on state and federal lands when the information identifies the location of exploration and mining activities and describes the surface disturbance that is occurring or projected to occur. The department may not disclose a licensee's or small miner's proprietary geological information.

(4) Failure to comply with the secrecy provisions of this part is punishable by a fine of up to $1,000.

History: En. Sec. 21, Ch. 252, L. 1971; amd. Sec. 1, Ch. 37, L. 1975; R.C.M. 1947, 50-1221; amd. Sec. 193, Ch. 575, L. 1981; amd. Sec. 3, Ch. 637, L. 1991; amd. Sec. 381, Ch. 418, L. 1995.

Cross-References

Right of privacy, Art II, sec. 10, Mont. Const.
Public records generally, Title 2, ch. 6, part 10.
Disposition of fines and forfeitures, 46-18-603, 82-4-311.
Administrative procedure, 82-4-353.

82-4-307. Review of existing files. Existing departmental files shall be reviewed, and their contents shall be segregated and available for public inspection to the same extent as new files under 82-4-306.

History: En. 50-1221.1 by Sec. 2, Ch. 37, L. 1975; R.C.M. 1947, 50-1221.1.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

82-4-308. Release by waiver. An applicant may release the department from the confidentiality requirements of this part by notarized waiver to that effect on forms to be provided by the department.

History: En. 50-1221.2 by Sec. 3, Ch. 37, L. 1975; R.C.M. 1947, 50-1221.2; amd. Sec. 382, Ch. 418, L. 1995.

82-4-309. Exemption — operations on federal lands. This part does not apply to operations on certain federal lands as specified by the department, provided it is first determined by the department that federal law or regulations issued by the federal agency administering such land impose controls for reclamation of said lands substantially equal to or greater than those imposed by this part.

History: En. Sec. 23, Ch. 252, L. 1971; R.C.M. 1947, 50-1223; amd. Sec. 97, Ch. 324, L. 2021.

Cross-References

Jurisdiction of state, Title 2, ch. 1, part 1.
State jurisdiction in federal enclaves, 2-1-201.

82-4-310. Exemption — scale and type of activity. (1) A person is exempt from this part when the person is engaging in a mining activity that does not:

(a) use motorized excavating equipment;
(b) use blasting agents;
(c) disturb more than 100 square feet or 50 cubic yards of material at any site;
(d) leave unreclaimed sites that are less than 1 mile apart;
(e) use mercury in any operations except in a contained facility that prevents the escape of any mercury into the environment; or
(f) use a cyanide ore-processing reagent or other metal leaching solvents or reagents in any operations.

(2) A person is exempt from this part when the person is engaging in a mining activity using a suction dredge if:
(a) the dredge in use has an intake of 4 inches in diameter or less;
(b) the person does not operate the dredge beyond the area of the streambed that is naturally under water at the time of operation; and
(c) the person has obtained for the activity:
(i) project approval pursuant to Title 75, chapter 7, part 1; and
(ii) a discharge permit issued pursuant to 75-5-402 and has paid the applicable fee provided in 75-5-516(12).

(3) This part does not apply to a person who, on land owned or controlled by that person, allows other persons to engage in mining activities if those activities cumulatively meet the requirements of subsection (1).

History: En. Sec. 24, Ch. 252, L. 1971; R.C.M. 1947, 50-1224; amd. Sec. 3, Ch. 272, L. 1997; amd. Sec. 3, Ch. 507, L. 1999; amd. Sec. 3, Ch. 468, L. 2003.

82-4-311. Disposition of fees, fines, penalties, and other uncleared money. (1) (a) Fines, penalties, and other uncleared money that has been or will be paid to the department under the provisions of this part must be placed in the environmental rehabilitation and response account in the state special revenue fund established in 75-1-110.

(b) Funds held by the department as bond or as a result of bond forfeiture that are no longer needed for reclamation and for which the department is not able to locate a surety or other person who owns the funds after diligent search must be deposited in the environmental rehabilitation and response account in the state special revenue fund established in 75-1-110.

(2) Fees paid to the department under this part must be placed in the hard-rock mining permitting program account established in 82-4-316.

History: En. 50-1227 by Sec. 1, Ch. 29, L. 1977; R.C.M. 1947, 50-1227; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 383, Ch. 418, L. 1995; amd. Sec. 4, Ch. 338, L. 2001; amd. Sec. 3, Ch. 634, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 634, L. 2025. Amendment effective July 1, 2025.

Cross-References

No money expended except upon appropriation, Art. VIII, sec. 14, Mont. Const.; 17-8-101.
Fiscal year defined, 17-2-110.
Reversion of unexpended appropriation, 17-7-304.

82-4-312. Hard-rock mining reclamation debt service fund. (1) There is a hard-rock mining reclamation debt service fund within the debt service fund type established in 17-2-102.

(2) The state pledges, allocates, and directs to be credited to the hard-rock mining reclamation debt service fund money from the metalliferous mines license tax, as provided in 15-37-117.

(3) Money in the hard-rock mining reclamation debt service fund that is in excess of the amount needed to satisfy the annual principal and interest payment requirements in 82-4-313 must be transferred to the hard-rock mining reclamation special revenue account created in 82-4-315.

History: En. Sec. 1, Ch. 460, L. 2001.

82-4-313. Hard-rock mining reclamation bonds. (1) When authorized by the legislature and within the limits of the authorization and the further limitations established in this section, the board of examiners may issue and sell hard-rock mining reclamation bonds of the state in the amount and manner that it considers necessary and proper to finance legally required reclamation, operation, and maintenance at hard-rock mines upon certification by the director of the department that the reclamation, operation, or maintenance would otherwise not occur because there is no likelihood of getting additional funds from the mine operator and the available surety bond is insufficient. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds issued and interest and redemption premiums payable on the bonds according to their terms.

(2) Each series of hard-rock mining reclamation bonds may be issued by the board of examiners upon request of the department, at public or private sale, in the denominations and forms, whether payable to the bearer with attached interest coupons or registered as to principal or as to both principal and interest, with provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at a rate or rates, maturing at a rate or rates, maturing at the time or times not exceeding 30 years from the date of issue, subject to optional or mandatory redemption at earlier times and prices and upon notice, with provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of the banking institution or institutions within or outside the state, as the board of examiners determines, subject to the limitations contained in 17-5-731 and this section.

(3) In the issuance of each series of hard-rock mining reclamation bonds, the interest rates, maturities, and any mandatory redemption provisions of the bonds must be established in a manner that the funds then specifically pledged and appropriated by law to the hard-rock mining reclamation debt service fund created in 82-4-312 will, in the judgment of the board of examiners, be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of the bonds, except outstanding bonds as to which the obligation of the state has been discharged

by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. The bonds, notes, and any interest coupons appurtenant to the bonds and notes must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all the bonds and notes issued and sold.

(5) All proceeds of bonds or notes issued under this section must be deposited in the hard-rock mining reclamation special revenue account created in 82-4-315.

(6) All actions taken by the board of examiners under this section must be authorized by a vote of a majority of the members.

History: En. Sec. 2, Ch. 460, L. 2001.

82-4-314. Authorization for sale of hard-rock mining reclamation bonds. The board of examiners is authorized to issue and sell hard-rock mining reclamation general obligation bonds in an amount not exceeding $8 million upon the request of the department, as provided for in 82-4-313. Proceeds of the bonds or notes are allocated to the hard-rock mining reclamation special revenue account provided for in 82-4-315 to fund:

(1) legally required reclamation, operation, and maintenance at hard-rock mines that would otherwise not occur when the director of the department determines that there is no likelihood of getting additional funds from the mine operator and the available surety bond is insufficient; and

(2) the costs of issuing the bonds or notes.

History: En. Sec. 3, Ch. 460, L. 2001.

82-4-315. Hard-rock mining reclamation special revenue account. (1) There is a hard-rock mining reclamation special revenue account within the state special revenue fund established in 17-2-102. There must be paid into the account:

(a) revenue from the sale of hard-rock mining reclamation bonds issued by the board of examiners pursuant to 82-4-313 and 82-4-314;

(b) interest income earned on the account; and

(c) excess money transferred from the hard-rock mining reclamation debt service fund as described in 82-4-312.

(2) Funds may be appropriated from the hard-rock mining reclamation special revenue account for the following purposes only:

(a) state costs of implementing legally required reclamation, operation, and maintenance at hard-rock mines that would otherwise not occur because there is no likelihood of getting additional funds from the mine operator and the available surety bond is insufficient;

(b) state costs of implementing legally required reclamation, operation, and maintenance neither eligible for nor reasonably expected to be reimbursed from other federal or private funds; and

(c) state costs related to the implementation of 82-4-312 through 82-4-315.

History: En. Sec. 4, Ch. 460, L. 2001.

82-4-316. Hard-rock mining permitting program account. (1) There is a hard-rock mining permitting program account in the state special revenue fund established in 17-2-102. Money transferred to the fund by the legislature, fees collected in accordance with this part, and interest and income earned on money in the account must be deposited in the account.

(2) The department shall use money in the account to administer and enforce this part.

History: En. Sec. 1, Ch. 634, L. 2025.

Compiler's Comments

Effective Date: Section 11, Ch. 634, L. 2025, provided: "[This act] is effective July 1, 2025."

82-4-317 through 82-4-320 reserved.

82-4-321. Administration. The department is charged with the responsibility of administering this part and adopting rules as necessary. The department shall employ experienced, qualified persons in the field of mined-land reclamation who, for the purpose of this part, are referred to as supervisors.

History: **En. Sec. 4, Ch. 252, L. 1971; amd. Sec. 2, Ch. 281, L. 1974; R.C.M. 1947, 50-1204; amd. Sec. 384, Ch. 418, L. 1995; amd. Sec. 98, Ch. 324, L. 2021.**

Cross-References

Adoption and publication of administrative rules, Title 2, ch. 4, part 3.

82-4-322. Investigations, research, and experiments. The department shall have the authority to conduct or authorize investigations, research, experiments, and demonstrations in reclamation and to collect and disseminate nonconfidential information relating to mining.

History: **En. Sec. 5, Ch. 252, L. 1971; R.C.M. 1947, 50-1205; amd. Sec. 385, Ch. 418, L. 1995.**

82-4-323. Interagency cooperation — receipt and expenditure of funds. The department shall cooperate with other governmental and private agencies in this state and other states and agencies of the federal government and may reasonably compensate them for any services the department requests that they provide. The department may receive federal funds, state funds, and any other funds and, within the limits imposed by the grant, expend them for reclamation of land affected by mining or exploration and for purposes enumerated in 82-4-336.

History: **En. Sec. 6, Ch. 252, L. 1971; R.C.M. 1947, 50-1206; amd. Sec. 386, Ch. 418, L. 1995.**

82-4-324 through 82-4-330 reserved.

82-4-331. Exploration license required — employees included — limitation. (1) (a) A person may not engage in exploration in the state without first obtaining an exploration license from the department. A license must be issued for a period of 1 year from the date of issue and is renewable from year to year on application. An application for renewal must be filed within 30 days preceding the expiration of the current license and be accompanied by payment of the fee specified in 82-4-342(2)(c), if applicable, and the following renewal fee:

(i) for an exploration license approved for activities beneath the surface of the land, $400; or

(ii) for an exploration license approved for activities only on the surface of the land, $100.

(b) A license may not be renewed if the applicant for renewal is in violation of any provision of this part. A license is subject to suspension and revocation as provided by this part.

(2) Employees of persons holding a valid license under this part are included in and covered by the license.

(3) A person may not be issued an exploration license if:

(a) that person's failure, or the failure of any firm or business association of which that person was a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or the completion of reclamation by the person's surety or by the department, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305; or

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of the abatement.

History: **En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(part); amd. Sec. 3, Ch. 588, L. 1979; amd. Sec. 3, Ch. 93, L. 1989; amd. Sec. 2, Ch. 598, L. 1993; amd. Sec. 387, Ch. 418, L. 1995; amd. Sec. 3, Ch. 488, L. 2001; amd. Sec. 4, Ch. 634, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 634, L. 2025. Amendment effective July 1, 2025.

Cross-References

Landowner notification of surface operations, Title 82, ch. 2, part 3.

82-4-332. Exploration license. (1) An exploration license must be issued to any applicant who:

(a) pays the following fee to the department:

(i) for a license approved for activities beneath the surface of the land, $2,000; or

(ii) for a license approved for activities only on the surface of the land, $1,000;

(b) agrees to reclaim any surface area damaged by the applicant during exploration operations, as may be reasonably required by the department; and

(c) is not in default of any other reclamation obligation under this law.

(2) An application for an exploration license must be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application must include an exploration map or sketch in sufficient detail to locate the area to be explored and to determine whether significant environmental problems would be encountered. The department shall by rule determine the precise nature of the exploration map or sketch. The applicant shall state what type of prospecting and excavation techniques will be employed in disturbing the land.

(3) Prior to the issuance of an exploration license, the applicant shall file with the department a reclamation and revegetation bond in a form and amount as determined by the department in accordance with 82-4-338.

(4) In the event that the holder of an exploration license desires to mine the area covered by the exploration license and has fulfilled all of the requirements for an operating permit, the department shall allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for an operating permit. Any land actually affected by exploration or excavation under an exploration license and not covered by the operating reclamation plan must be reclaimed within 2 years after the completion of exploration or abandonment of the site in a manner acceptable to the department.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(2); amd. Sec. 5, Ch. 201, L. 1979; amd. Sec. 4, Ch. 588, L. 1979; amd. Sec. 2, Ch. 137, L. 1991; amd. Sec. 388, Ch. 418, L. 1995; amd. Sec. 4, Ch. 488, L. 2001; amd. Sec. 99, Ch. 324, L. 2021; amd. Sec. 5, Ch. 634, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 634, L. 2025. Amendment effective July 1, 2025.

Cross-References

Certificate of claim location to be filed, 82-2-102.

82-4-333. Repealed. Sec. 8, Ch. 588, L. 1979.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(3), (4).

82-4-334. Exception — geological phenomena. Upon proper application by the holder of an exploration license, the department may excuse such holder from reclamation obligations with reference to any specified openings or excavations exposing geological indications or phenomena of especial interest, even though the licensee does not apply or have any intention to apply for an operating permit for the land in which such openings or excavations have been made.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(6); amd. Sec. 5, Ch. 588, L. 1979; amd. Sec. 389, Ch. 418, L. 1995.

82-4-335. Operating permit — limitation — fees. (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those activities in the state without first obtaining a final operating permit from the department. Except as provided in 82-4-343, a separate final operating permit is required for each complex.

(2) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

(3) (a) Prior to receiving an operating permit from the department, a person shall pay an application fee of $5,000, except that a person mining primarily rock products as defined in 82-4-303 shall pay an application fee of $500.

(b) The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The department may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed $5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(c) (i) Subject to subsection (3)(c)(ii), a contractor shall, at the request of the applicant, directly submit invoices of contractor expenses to the applicant.

(ii) A contractor's work is assigned, reviewed, accepted, or rejected by the department pursuant to this section.

(4) The person shall submit an application on a form provided by the department, which must contain the following information and any other pertinent data required by rule:

(a) the name and address of the operator, the engineer of record if applicable, and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

(b) the minerals expected to be mined;

(c) a proposed reclamation plan;

(d) the expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;

(f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;

(g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;

(h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;

(i) the types of access roads to be built and manner of reclamation of road sites on abandonment;

(j) a plan that will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(k) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable. For a tailings storage facility, this requirement is met by submission of a design document pursuant to 82-4-376, a written report pursuant to 82-4-377, and a tailings operation, maintenance, and surveillance manual pursuant to 82-4-379 prior to issuance of a draft permit.

(m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;

(n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site. For a tailings storage facility, this requirement is met by submission of a design document pursuant to 82-4-376, a written report pursuant to 82-4-377, and a tailings operation, maintenance, and surveillance manual pursuant to 82-4-379 prior to issuance of a draft permit.

(o) an assessment of the potential for the postmining use of mine-related facilities for other industrial purposes, including evidence of consultation with the county commission of the county or counties where the mine or mine-related facilities will be located.

(5) Except as provided in subsection (7), the permit provided for in subsection (1) for a large-scale mineral development, as defined in 90-6-302, must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(6) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(7) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(8) A person may not be issued an operating permit if:

(a) that person's failure, or the failure of any firm or business association of which that person was a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or the completion of reclamation by the person's surety or by the department, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305; or

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(9) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (4)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (9)(a)(i) or (9)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members.

History: **En. Sec. 8, Ch. 252, L. 1971; amd. Sec. 4, Ch. 281, L. 1974; R.C.M. 1947, 50-1208; amd. Sec. 6, Ch. 588, L. 1979; amd. Sec. 13, Ch. 617, L. 1981; amd. Sec. 1, Ch. 489, L. 1983; amd. Sec. 1, Ch. 345, L. 1985; amd. Sec. 3, Ch. 453, L. 1985; amd. Sec. 2, Ch. 582, L. 1985; amd. Sec. 1, Ch. 311, L. 1987; amd. Sec. 4, Ch. 93, L. 1989;**

amd. Sec. 3, Ch. 347, L. 1989; amd. Sec. 4, Ch. 227, L. 1991; amd. Sec. 1, Ch. 403, L. 1991; amd. Sec. 4, Ch. 637, L. 1991; amd. Sec. 3, Ch. 598, L. 1993; amd. Sec. 390, Ch. 418, L. 1995; amd. Sec. 4, Ch. 507, L. 1999; amd. Sec. 5, Ch. 488, L. 2001; amd. Sec. 2, Ch. 365, L. 2003; amd. Sec. 3, Ch. 63, L. 2005; amd. Sec. 1, Ch. 145, L. 2011; amd. Sec. 3, Ch. 410, L. 2011; amd. Sec. 11, Ch. 399, L. 2015; amd. Sec. 3, Ch. 152, L. 2021; amd. Sec. 100, Ch. 324, L. 2021; amd. Sec. 2, Ch. 504, L. 2025; amd. Sec. 6, Ch. 634, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 2, Ch. 504, L. 2025. Amendment effective May 8, 2025.

See 2025 Session Law for amendment made by sec. 6, Ch. 634, L. 2025. Amendment effective July 1, 2025.

Cross-References

Landowner notification of surface operations, Title 82, ch. 2, part 3.

82-4-336. Reclamation plan and specific reclamation requirements. (1) Taking into account the site-specific conditions and circumstances, including the postmining use of the mine site, disturbed lands must be reclaimed consistent with the requirements and standards set forth in this section.

(2) The reclamation plan must provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, must be conducted simultaneously with the operation and in any case must be initiated promptly after completion or abandonment of the operation on those portions of the complex that will not be subject to further disturbance.

(3) In the absence of an order by the department providing a longer period, the plan must provide that reclamation activities must be completed not more than 2 years after completion or abandonment of the operation on that portion of the complex.

(4) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without previously obtaining from the department written approval for the proposed change.

(5) Provision must be made to avoid accumulation of stagnant water in the development area to the extent that it serves as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(6) All final grading must be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the department for a supervised sanitary fill.

(7) When mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions ("objectionable effluents") on exposure to moisture, the reclamation plan must include provisions that adequately provide for:

(a) insulation of all faces from moisture or water contact by covering the faces with material or fill not susceptible itself to generation of objectionable effluents in order to mitigate the generation of objectionable effluents;

(b) processing of any objectionable effluents in the pit before they are allowed to flow or be pumped out of the pit to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the department;

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the department before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and other devices that may reasonably be required by the department.

(8) Provisions for vegetative cover must be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan. The reestablished vegetative cover must meet county standards for noxious weed control.

(9) (a) With regard to disturbed land other than open pits and rock faces, the reclamation plan must provide for the reclamation of all disturbed land to comparable utility and stability as that of adjacent areas. This standard may not be applied to require the removal of mine-related facilities that are valuable for postmining use. If the reclamation plan provides that mine-related facilities will not be removed or that the disturbed land associated with the facilities will not be reclaimed by the permittee, the following apply:

(i) The postmining use of the mine-related facilities must be approved by the department.

(ii) In the absence of a legitimate postmining use of mine-related facilities upon completion of other approved mine reclamation activities, the permittee shall comply with the reclamation requirements of this part and the reclamation plan within the time limits established in subsection (3) for mine-related facilities that had previously been identified as valuable for postmining use.

(b) With regard to open pits and rock faces, the reclamation plan must provide sufficient measures for reclamation to a condition:

(i) of stability structurally competent to withstand geologic and climatic conditions without significant failure that would be a threat to public safety and the environment;

(ii) that affords some utility to humans or the environment;

(iii) that mitigates postreclamation visual contrasts between reclamation lands and adjacent lands; and

(iv) that mitigates or prevents undesirable offsite environmental impacts.

(c) The use of backfilling as a reclamation measure is neither required nor prohibited in all cases. A department decision to require any backfill measure must be based on whether and to what extent the backfilling is appropriate under the site-specific circumstances and conditions in order to achieve the standards described in subsection (9)(b).

(10) The reclamation plan must provide sufficient measures to ensure public safety and to prevent the pollution of air or water and the degradation of adjacent lands.

(11) A reclamation plan must be approved by the department if it adequately provides for the accomplishment of the requirements and standards set forth in this section.

(12) The reclamation plan must provide for permanent landscaping and contouring to minimize the amount of precipitation that infiltrates into disturbed areas that are to be graded, covered, or vegetated, including but not limited to tailings impoundments and waste rock dumps. The plan must also provide measures to prevent objectionable postmining ground water discharges.

(13) The reclamation plan must include, if applicable, the requirements for postclosure monitoring of a tailings storage facility agreed to by a panel pursuant to 82-4-377.

History: En. Sec. 9, Ch. 252, L. 1971; amd. Sec. 5, Ch. 281, L. 1974; amd. Sec. 14, Ch. 39, L. 1977; R.C.M. 1947, 50-1209; amd. Sec. 2, Ch. 345, L. 1985; amd. Sec. 4, Ch. 453, L. 1985; amd. Sec. 391, Ch. 418, L. 1995; amd. Sec. 1, Ch. 464, L. 1995; amd. Sec. 2, Ch. 7, Sp. L. May 2000; amd. Sec. 3, Ch. 365, L. 2003; amd. Sec. 1, Ch. 459, L. 2003; amd. Sec. 12, Ch. 399, L. 2015.

Cross-References

County weed control, Title 7, ch. 22, part 21.

Denial of operating permit for failure of reclamation plan to comply with air quality, water quality, or public water treatment criteria, 82-4-351.

82-4-337. Inspection — issuance of operating permit — modification, amendment, or revision. (1) (a) The department shall review all applications for operating permits for completeness and compliance with the requirements of this part and rules adopted pursuant to this part within:

(i) for rock products, 60 days of receipt of the initial application and within 20 days of receipt of responses to notices of deficiencies. If an applicant for a rock products operating permit responds to a notice of deficiency more than 1 year after its receipt, the department has 60 days to review the response to the notice of deficiency.

(ii) for all other applications not covered under subsection (1)(a)(i), 90 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies.

(b) The department's initial notice must note all deficiency issues, and the department may not in a later notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department shall notify the applicant concerning completeness and compliance as soon as possible. An application is considered complete and compliant unless the applicant is notified of deficiencies within the appropriate review period.

(c) The review for completeness and compliance is limited to areas in regard to which the department has statutory authority.

(d) When providing notice of deficiencies, the department shall identify each section in this part or rules adopted pursuant to this part related to the deficiency.

(e) When an application is complete and compliant, the department shall:

(i) declare in writing that the application is complete and compliant;

(ii) detail in writing the substantive requirements of this part and how the application complies with those requirements;

(iii) when an application submitted after October 1, 2015, includes a tailings storage facility, verify the receipt of the certified design document pursuant to 82-4-376, the written report pursuant to 82-4-377, and the tailings operation, maintenance, and surveillance manual pursuant to 82-4-379; and

(iv) issue a draft permit. The department may, as a condition of issuing the draft permit, require that the applicant obtain other permits required by law but not provided for in this part. However, the department may not withhold issuance of the draft permit in the absence of those permits.

(f) Prior to issuance of a draft permit, the department shall inspect the site. If the site is not accessible because of extended adverse weather conditions, the department shall inspect the site at the first available opportunity and may extend the time period prescribed in subsection (1)(a) by a term agreed to by the applicant.

(g) Issuance of the draft permit as a final permit is the proposed state action subject to review required by Title 75, chapter 1.

(h) If the applicant is not notified that there are deficiencies or inadequacies in the application or that the application is compliant within the time period required by subsection (1)(a), the final operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(i) of this section. The department shall promptly notify the applicant of the form and amount of bond that will be required. After the department notifies the applicant of deficiencies in the application within the time period required by subsection (1)(a), no further action by the department is required until the applicant has responded to the deficiency notification.

(i) Except as provided in subsection (1)(h), a final permit may not be issued until:

(i) sufficient bond has been submitted pursuant to 82-4-338;

(ii) the information and certification have been submitted pursuant to 82-4-335(9);

(iii) the department has found that permit issuance is not prohibited by 82-4-335(8) or 82-4-341(7);

(iv) the review pursuant to Title 75, chapter 1, is completed or 1 year has elapsed after the date the draft permit was issued, whichever is less. The applicant may by written waiver extend this time period.

(v) the department has made a determination that the application and the final permit meet the substantive requirements of this part and the rules adopted pursuant to this part.

(j) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(2) (a) After issuance of a draft permit but prior to receiving a final permit, an applicant may propose modifications to the application. If the proposed modifications substantially change the proposed plan of operation or reclamation, the department may terminate the draft permit and review the application as modified pursuant to subsection (1) for completeness and compliance and issuance of a new draft permit.

(b) The department shall consult with the applicant before placing stipulations in a draft or final permit. Permit stipulations in a draft or final permit may, unless the applicant consents, address only compliance issues within the substantive requirements of this part or rules adopted pursuant to this part. For a stipulation imposed without the applicant's consent, the department shall provide to the applicant in writing the reason for the stipulation, a citation to the statute or rule that gives the department the authority to impose the stipulation, and, for a stipulation imposed in the final permit that was not contained in the draft permit, the reason that the stipulation was not contained in the draft permit.

(c) Within 40 days of the completion of the review required by Title 75, chapter 1, or 1 year from the date the draft permit is issued, whichever is less, the department shall issue its bond determination.

(d) When the department prepares an environmental review jointly with a federal agency acting under the National Environmental Policy Act, the applicant may by written waiver extend the 1-year deadline contained in subsection (1)(i)(iv).

(e) Upon submission of the bond and subject to subsection (1)(i), the department shall issue the final permit.

(3) The final operating permit must be granted for the period required to complete the operation and is valid until the operation authorized by the permit is completed or abandoned, unless the permit is suspended or revoked by the department as provided in this part.

(4) The final operating permit must provide that the reclamation plan may be modified by the department, upon proper application of the permittee or after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so that they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations not permitted under the terms of regulatory permits held by the permittee are revealed by field inspection and the department has the authority to address them under the provisions of this part.

(5) (a) The modification of a final operating permit may be a major or minor permit amendment or a permit revision. A modification of the operating permit, including a modification necessary to comply with the requirements of existing law as interpreted by a court of competent jurisdiction must be processed in accordance with the procedures for an application for a permit amendment or revision that are established pursuant to 82-4-342 and this section.

(b) The modification of an operating permit may not be finalized and an existing bond amount may not be increased until the permit modification procedures and analysis described in subsection (5)(a) are completed.

History: En. Sec. 10, Ch. 252, L. 1971; amd. Sec. 6, Ch. 281, L. 1974; amd. Sec. 1, Ch. 427, L. 1977; R.C.M. 1947, 50-1210(1), (2); amd. Sec. 7, Ch. 588, L. 1979; amd. Sec. 5, Ch. 453, L. 1985; amd. Sec. 5, Ch. 637, L. 1991; amd. Sec. 5, Ch. 472, L. 1993; amd. Sec. 4, Ch. 598, L. 1993; (4) thru (7)En. Sec. 5, Ch. 598, L. 1993; amd. Sec. 2, Ch. 204, L. 1995; amd. Sec. 392, Ch. 418, L. 1995; amd. Sec. 295, Ch. 42, L. 1997; amd. Sec. 12, Ch. 299, L. 2001; amd. Sec. 1, Ch. 287, L. 2003; amd. Sec. 4, Ch. 63, L. 2005; amd. Sec. 15, Ch. 337, L. 2005; amd. Sec. 4, Ch. 410, L. 2011; amd. Sec. 13, Ch. 399, L. 2015; amd. Sec. 5, Ch. 152, L. 2021; amd. Sec. 3, Ch. 504, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 504, L. 2025. Amendment effective May 8, 2025.

Cross-References

Contested administrative cases, Title 2, ch. 4, part 6.

82-4-338. Performance bond. (1) (a) An applicant for an exploration license or operating permit shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than $200 for each acre or fraction of an acre of the disturbed land, conditioned upon the faithful performance of the requirements of this part, the rules of the department, and the permit. In lieu of a bond, the applicant may file with the department a cash deposit, an assignment of a certificate of deposit, an irrevocable letter of credit, or other surety acceptable to the department. The bond may not be less than the estimated cost to the state to ensure compliance with Title 75, chapters 2 and 5, this part, the rules, and the permit, including the potential cost of department management, operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment, during a suspension authorized pursuant to 82-4-341(8)(b)(ii) or until full bond liquidation can be effected.

(b) A public or governmental agency may not be required to post a bond under the provisions of this part.

(c) A blanket performance bond covering two or more operations may be accepted by the department. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

(d) (i) For an exploration license or operating permit authorizing activities on federal land within the state, the department may accept a bond payable to the state of Montana and the federal agency administering the land. The bond must provide at least the same amount of financial guarantee as required by this part.

(ii) The bond must provide that the department may forfeit the bond without the concurrence of the federal land management agency. The bond may provide that the federal land management agency may forfeit the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be payable to the department and may also be payable to the federal land management agency. If the bond is payable to the department and the federal land management agency, the department, before accepting the bond, shall enter into an agreement or memorandum of understanding with the federal land management agency providing for administration of the bond funds in a manner that will allow the department to provide for compliance with the requirements of this part, the rules adopted under this part, and the permit.

(iii) The department may not enter into an agreement or memorandum of understanding with a federal land management agency that would require the department to impose requirements on an operator that are more stringent than state law and rules.

(2) (a) The department may calculate one or more reclamation plan components within its jurisdiction with the assistance of one or more third-party contractors selected jointly by the department and the applicant and compensated by the applicant when, based on relevant past experience, the department determines that additional expertise is necessary to calculate the bond amount for reclamation plan components. The department may contract for assistance pursuant to this subsection in determining bond amounts for the initial bond and for any subsequent bond review and adjustment. The mine owner is responsible for the first $5,000 in contractor services provided under this subsection. The mine owner and the department are each responsible for 50% of any amount over $5,000.

(b) To select a third-party contractor as authorized in subsection (2)(a), the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(3) (a) The department shall conduct an overview of the amount of each bond annually and shall conduct a comprehensive bond review at least every 5 years. The department may conduct additional comprehensive bond reviews if, after modification of a reclamation or operation plan, an annual overview, or an inspection of the permit area, the department determines that an increase of the bond level may be necessary. The department shall consult with the licensee or permittee if a review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of compliance with this part, the rules, and the permit, the department shall modify the bonding requirements of that permit or license. The licensee or permittee must have 60 days to negotiate the preliminary bond determination with the department, at the end of which time period the department shall issue the proposed bond determination. The department shall give the licensee or permittee a copy of the bond calculations that form the basis for the proposed bond determination and, for operating permits, publish notice of the proposed bond determination in a newspaper of general circulation in the county in which the operation is located. The department shall issue a final bond determination in 30 days. Unless the licensee or permittee requests a hearing under subsection (3)(b), the licensee or permittee shall post bond with the department in the amount represented by the final bond determination no later than 30 days after issuance of the final bond determination. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a 30-day extension of the deadline.

(b) The permittee or any person with an interest that may be adversely affected may obtain a contested case hearing before the board under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, on the final bond determination by filing with the department, within 30 days of the issuance of the final bond determination, a written request for hearing stating the reason for the request. The request for hearing must specify the amount of bond increase, if any, that the licensee or permittee considers appropriate and state the reasons that the licensee or permittee considers the department's final bond determination to be excessive. As a condition precedent to any right to request a hearing, the licensee or permittee shall post bond with the department in the amount of the bond increase that the licensee or permittee has stated is appropriate in the request for hearing or the amount that is one-half of the increase contained in the department's final bond determination, whichever amount is greater. If the board determines that additional bond is necessary, the licensee or permittee shall post bond in the amount determined by the board within 30 days of receipt of the decision. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a reasonable extension of the deadline.

(c) If a licensee or permittee fails to post bond in accordance with subsection (3)(a) or (3)(b) in the required amounts by the required deadlines, the license or permit is suspended by operation of law and the licensee or permittee shall immediately cease mining and exploration operations until the required bond is posted with and approved by the department.

(4) A bond filed in accordance with the provisions of this part may not be released by the department until the provisions of this part, the rules adopted pursuant to this part, and the permit have been fulfilled.

(5) A bond filed for an operating permit obtained under 82-4-335 or 82-4-343 may not be released or decreased until the public has been provided an opportunity for a hearing and a hearing has been held if requested. The department shall provide reasonable statewide and local notice of the opportunity for a hearing, including but not limited to publishing the notice in newspapers of general daily circulation.

(6) Except as provided in subsection (7), all bonds required in accordance with the provisions of this section must be based upon reasonably foreseeable activities that the applicant may conduct in order to comply with conditions of an operating permit or license. Bonds may be required only for anticipated activities as described in subsection (1). Only those activities that themselves or in conjunction with other activities have a reasonable possibility of occurring may be bonded. Bond calculations, including calculations for the initial bond or for subsequent bond reviews and adjustments, may not include amounts for any occurrence or contingency that is not a reasonably foreseeable result of any activity conducted by the applicant.

(7) (a) If the department determines, based on unanticipated circumstances that are discovered following the issuance of a mining permit, that a substantial and imminent danger to public health, public safety, or the environment exists or that there is a reasonable probability that a violation of water quality standards will occur, the department may require an operator to submit an amended reclamation plan to address the danger and to post a temporary bond to guarantee the performance of the amended portion of the reclamation plan. The temporary bond may only be required if the anticipated costs associated with the plan amendment would increase the total bond amount for the current plan by more than 10%, as determined in subsection (7)(b).

(b) (i) In determining the need for the temporary bond and the amount of the temporary bond under subsection (7)(a), the department shall select a third-party contractor in consultation with the operator pursuant to subsection (7)(b)(ii) to provide:

(A) a technical engineering analysis and report on the substantial and imminent danger to public health, public safety, or the environment identified in subsection (7)(a); and

(B) the estimated costs of addressing the potential danger in order to establish the amount of the temporary bond.

(ii) The department shall provide the operator with a list of at least four qualified third-party contractors. The operator shall select two qualified third-party contractors from that list. The department shall select its contractor from the list provided by the operator. The operator shall reimburse the department for the reasonable costs of the third-party contractor.

(c) An approved interim amended reclamation plan and interim bond must remain in effect until the earlier of:

(i) the date that a revised reclamation plan is approved pursuant to 82-4-337 and a permanent bond for the revised reclamation plan is submitted and accepted pursuant to this section; or

(ii) 2 years following the date of submission of a complete application pursuant to 82-4-337 to modify the reclamation plan provision or remedy the conditions that created the need to amend the reclamation plan unless the department approves or denies the complete application within 2 years of submission. The applicant may agree to an extension of this deadline.

(d) Except as provided in subsection (8), the process provided for in this subsection (7) is not subject to the provisions of Title 75, chapter 1.

(8) (a) In determining whether to require amendment of a reclamation plan under subsection (7)(a), the department shall prepare or require the permittee to prepare a written analysis of changes in the reclamation plan that may eliminate or mitigate to an acceptable level the environmental condition. The analysis must include an assessment of the effectiveness of the changes and any potential negative environmental impacts of the changes. The department shall prepare an environmental impact statement pursuant to Title 75, chapter 1, only if the department determines that the changes would not mitigate the condition to an acceptable level or may have potentially significant negative environmental impacts.

(b) If the department determines that preparation of an environmental impact statement is necessary, the permittee shall pay the department's costs pursuant to 75-1-205.

(9) At the applicant's discretion, bonding in addition to that required by this section may be posted. These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section.

(10) (a) If the department determines that there exists at an area permitted or licensed under this part an imminent danger to public health, public safety, or the environment caused by a violation of this part, the rules adopted pursuant to this part, or the permit or license and if the permittee or licensee fails or refuses to expeditiously abate the danger, the department may immediately suspend the permit or license, enter the site, and abate the danger. The department may institute proceedings to revoke the license or permit, declare the permittee or licensee in default, and forfeit a portion of the bond, not to exceed $150,000 or 10% of the bond, whichever is less, to be used to abate the danger. The department shall notify the surety of the forfeiture and the forfeiture amount by certified mail, and the surety shall pay the forfeiture amount to the department within 30 days of receipt of the notice. The department shall, as a condition of any termination of the suspension and revocation proceedings, require that the permittee or licensee reimburse the surety, with interest, for any amount paid to and expended by the department pursuant to this subsection (10) and for the actual cost of the surety's expenses in responding to the department's forfeiture demand.

(b) If the department is unable to permanently abate the imminent danger using the amount forfeited under subsection (10)(a), the department may forfeit additional amounts under the procedure provided in subsection (10)(a).

(c) The department shall return to the surety any money received from the surety pursuant to this subsection (10) and not used by the department to abate the imminent danger. The amount not returned to the surety must be credited to the surety and reduces the penal amount of the bond on a dollar-for-dollar basis.

(d) Any interest accrued on bond proceeds that is not required to abate the imminent danger determined in subsection (10)(a) must be returned to the surety, unless otherwise agreed to in writing by the surety.

(11) If a bond is terminated as a result of the action or inaction of a licensee or permittee or is canceled or otherwise terminated by the surety issuing the bond and the licensee or permittee fails to post a new bond for the entire amount of the terminated bond within 30 days following the notice of termination provided to the department, then the license or permit must be immediately suspended without further action by the department.

History: **En. Sec. 11, Ch. 252, L. 1971; amd. Sec. 7, Ch. 281, L. 1974; R.C.M. 1947, 50-1211; amd. Sec. 3, Ch. 345, L. 1985; amd. Sec. 6, Ch. 637, L. 1991; amd. Sec. 6, Ch. 598, L. 1993; amd. Sec. 1, Ch. 395, L. 1995; amd. Sec. 393, Ch. 418, L. 1995; amd. Sec. 5, Ch. 507, L. 1999; amd. Sec. 11, Ch. 79, L. 2001; amd. Sec. 6, Ch. 488, L. 2001; amd. Sec. 1, Ch. 32, L. 2005; amd. Sec. 1, Ch. 269, L. 2007; amd. Sec. 1, Ch. 458, L. 2019; amd. Sec. 6, Ch. 152, L. 2021; amd. Sec. 101, Ch. 324, L. 2021.**

Cross-References

Surety bonds and companies, Title 28, ch. 11, part 4; Title 33, ch. 26, part 1.

82-4-339. Annual report of activities by permittee — fee — notice of large-scale mineral developer status. (1) Within 30 days after completion or abandonment of operations on an area under permit or within 30 days after each anniversary date of the permit, whichever is earlier, or at a later date that may be provided by rule and each year after that date until reclamation is completed and approved, the permittee shall pay the applicable annual fee provided for in subsections (3) or (4) and shall file a report of activities completed during the preceding year on a form prescribed by the department. The report must:

(a) identify the permittee and the permit number;

(b) locate the operation by subdivision, section, township, and range and with relation to the nearest town or other well-known geographic feature;

(c) estimate acreage to be newly disturbed by operation in the next 12-month period;

(d) include the number of persons on the payroll for the previous permit year and for the next permit year at intervals that the department considers sufficient to enable a determination of the permittee's status under 90-6-302(4);

(e) update the information required in 82-4-335(4)(a); and

(f) update any maps previously submitted or specifically requested by the department. The maps must show:

(i) the permit area;

(ii) the unit of disturbed land;

(iii) the area to be disturbed during the next 12-month period;

(iv) if completed, the date of completion of operations;

(v) if not completed, the additional area estimated to be further disturbed by the operation within the following permit year; and

(vi) the date of beginning, amount, and current status of reclamation performed during the previous 12 months.

(2) Whenever the department determines that the permittee has become or will, during the next permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the permittee, the hard-rock mining impact board, and the county or counties in which the operation is located.

(3) Except as provided in subsection (4):

(a) for a mine required to file a reclamation bond pursuant to 82-4-338(1)(a), a permittee shall pay the fee specified under 82-4-342(2)(c), if applicable, and an annual permit fee as follows:

(i) for a mine of 500 acres or more of a bonded disturbance, $5,000;

(ii) for a mine of 100 acres or more but less than 500 acres of a bonded disturbance, $3,000; or

(iii) for a mine of less than 100 acres of a bonded disturbance, $1,000; or

(b) for a mine not required to file a reclamation bond pursuant to 82-4-338(1)(a), a permittee shall pay the fee specified under 82-4-342(2)(c) or 82-4-343(3)(c), if applicable, and an annual permit fee of $100.

(4) Upon submission of an annual report of activities as required in subsection (1), a person permitted under this part to mine rock products as defined in 82-4-303 shall pay:

(a) the applicable fee specified under 82-4-342(2)(c) or 82-4-343(3)(c); and

(b) an annual permit fee as follows:

(i) when the report is submitted between July 1, 2025, and June 30, 2026, 25% of the applicable fee in subsection (3)(a);

(ii) when the report is submitted between July 1, 2026, and June 30, 2027, 50% of the applicable fee in subsection (3)(a);

(iii) when the report is submitted between July 1, 2027, and June 30, 2028, 75% of the applicable fee in subsection (3)(a); or

(iv) when the report is submitted on or after July 1, 2028, 100% of the applicable fee in subsection (3)(a).

History: **En. Sec. 12, Ch. 252, L. 1971; R.C.M. 1947, 50-1212; amd. Sec. 3, Ch. 582, L. 1985; amd. Sec. 5, Ch. 227, L. 1991; amd. Sec. 7, Ch. 637, L. 1991; amd. Sec. 394, Ch. 418, L. 1995; amd. Sec. 7, Ch. 488, L. 2001; amd. Sec. 5, Ch. 63, L. 2005; amd. Sec. 7, Ch. 152, L. 2021; amd. Sec. 102, Ch. 324, L. 2021; amd. Sec. 7, Ch. 634, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 7, Ch. 634, L. 2025. Amendment effective July 1, 2025.

Cross-References

Hard-rock mining impact, Title 90, ch. 6, part 3.

82-4-340. Successor operator. (1) Subject to this part, when one operator succeeds to the interest of another in any uncompleted operation by transfer, including sale, assignment, lease, or otherwise, the department may release the first operator from the duties imposed on the operator by this part. Provided that both operators comply with the requirements of this part and the successor operator assumes the duty of the former operator to complete the reclamation of the land and the ability to operate pursuant to the permit or subsequent modifications approved by the department to the permit consistent with this part, the department shall transfer the permit to the successor operator on department approval of the successor operator's bond and the transfer of property interests, as required under this part.

(2) A transfer by the department to a successor operator pursuant to this section may not affect a lien, claim, encumbrance, or interest in the property subject to operations that the department determines are valid at the time of the transfer and rights and defenses associated with the lien, claim, encumbrance, or interest. This subsection does not apply to a lien, claim, encumbrance, or interest in a property of the original operator or an affiliate or person controlling the operator or affiliate.

(3) For an operation with a forfeited bond where the department holds a suspended permit pursuant to 82-4-341(8), the department may transfer the permit to a successor operator provided that the successor operator:

(a) complies with the requirements of this part;

(b) assumes the duty of the former operator to complete reclamation pursuant to this part;

(c) operates pursuant to the permit or a subsequent modification approved by the department to the permit; and

(d) submits to the department:

(i) any additional bond required under 82-4-338; and

(ii) a $2,000 fee.

(4) If the department believes there is a potential to transfer a suspended permit, then the department may initiate proceedings in district court for eminent domain of the surface, minerals, or other property interest not held by the United States within or appurtenant to the permit boundary, including ingress and egress to the permit boundary, if:

(a) the department makes written findings that it is in the public interest of Montana taxpayers, environmental protection, and reclamation. With the written findings, the right of eminent domain must be considered a public use as included with those listed in 70-30-102. Although not required, the department may consider the following when determining the public interest:

(i) the value of the property, fixtures, and potential for operations if the property is transferred, based on an inspection and evaluation by the department or at the department's request prior to initiating eminent domain proceedings pursuant to Title 70, chapter 30;

(ii) the existence of tax liens on the property;

(iii) the financial liability to the Montana taxpayers for the cost of reclamation or remediation by the department of the operation pursuant to 82-4-341;

(iv) whether the county or counties where the permitted operation is located agree that transferring the property interest is in the best interest of the county or counties; and

(v) whether there is an immediate environmental need;

(b) the property interest is within or appurtenant to the permit boundary of an operator that has been:

(i) prohibited from mining pursuant to 82-4-360 for at least 1 year from the date of notice to the operator of the prohibition and the operator does not have a timely, pending appeal pursuant to this part; and

(ii) issued a violation letter by the department pursuant to 82-4-361 on a transferred permit;

(c) the available bond is insufficient for the permitted operation and the amount of the bond forfeited pursuant to 82-4-341 is less than the bond amount calculated pursuant to 82-4-338; and

(d) there is a successor operator who can operate under a permit transferred pursuant to subsection (1). The department and the proposed successor operator may enter into an agreement for the transfer of the property when it is condemned and the department takes possession pursuant to subsection (5).

(5) If the department initiates eminent domain proceedings pursuant to Title 70, chapter 30, and requests immediate possession of the property pursuant to 70-30-311, then the court shall grant the department immediate possession of the property prior to determining compensation.

(6) An eligible successor operator may post the bond required by 70-30-311(3) in accordance with an agreement entered pursuant to 82-4-340(4)(d).

(7) After the department is in possession of the property, the court shall determine compensation pursuant to 70-30-302, except that when determining the value of the property interest the commissioners shall consider:

(a) the greater of the amount:

(i) equal to the difference between the bond amount forfeited pursuant to 82-4-341 and the bond amount calculated pursuant to 82-4-338; or

(ii) necessary to complete site reclamation;

(b) the amount of a tax lien against the property;

(c) the value of mineral interests, development potential, or future mining based solely on the value while in the possession of the original operator, who is prohibited from mining pursuant to 82-4-360; and

(d) other costs incurred by the state to suspend, terminate, or transfer the permit and recover the forfeited bond.

(8) Nothing in this section limits the department's ability to modify the transferred permit or reclamation plan pursuant to this part.

History: En. Sec. 10, Ch. 252, L. 1971; amd. Sec. 6, Ch. 281, L. 1974; amd. Sec. 1, Ch. 427, L. 1977; R.C.M. 1947, 50-1210(3); amd. Sec. 6, Ch. 453, L. 1985; amd. Sec. 395, Ch. 418, L. 1995; amd. Sec. 2, Ch. 458, L. 2019; amd. Sec. 1, Ch. 513, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 513, L. 2025. Amendment effective May 8, 2025.

82-4-341. Compliance — reclamation by department. (1) The department shall cause the permit area to be inspected at least annually to determine whether the permittee has complied with this part, the rules adopted under this part, or the permit.

(2) The permittee shall proceed with reclamation as scheduled in the approved reclamation plan or as required pursuant to subsection (9). Following written notice by the department noting deficiencies, the permittee shall commence action within 30 days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected. Deficiencies that also violate other laws that require earlier rectification must be corrected in accordance with the applicable time provisions of those laws. The department may extend performance periods referred to in 82-4-336 and in this section for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the department, making every reasonable effort to comply.

(3) Within 30 days after notification by the permittee and when, in the judgment of the department, reclamation of a unit of disturbed land area is properly completed, the department shall provide the public notice and conduct any hearing requested pursuant to 82-4-338. As soon as practicable after notice and hearing, the permittee must be notified in writing and the bond on the area must be released or decreased proportionately to the acreage included within the bond coverage.

(4) The department shall cause the bond to be forfeited if:

(a) reclamation of disturbed land is not pursued in accordance with the reclamation plan and the permittee has not commenced action to rectify deficiencies within 30 days after notification by the department;

(b) reclamation is not properly completed in conformance with the reclamation plan within 2 years after completion or abandonment of operation on any fraction of the permit area or within a longer period that may have been authorized under this part; or

(c) after default by the permittee, the surety either refuses or fails to perform the work to the satisfaction of the department within the time required.

(5) The department shall notify the permittee and the surety by certified mail. If the bond is not paid within 30 days after receipt of the notice, the attorney general, upon request of the department, shall bring an action on behalf of the state in district court.

(6) The department may, with the staff, equipment, and material under its control or by contract with others, take any necessary actions for required reclamation of the disturbed lands according to the existing reclamation plan or a modified reclamation plan if the department makes a written finding that the modifications are necessary to prevent a violation of Title 75, chapter 2 or 5, or to prevent a substantial reclamation failure. Except in an environmental emergency, work provided for in this section must be let on the basis of competitive bidding. The department shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials used. The surety is liable to the state to the extent of the bond. The permittee is liable for the remainder of the cost. Upon completion of the reclamation, the department shall return to the surety any amount not expended, including any unexpended interest accrued on bond proceeds, unless otherwise agreed to in writing by the surety.

(7) In addition to the other liabilities imposed by this part, failure to commence an action to remedy specific deficiencies in reclamation within 30 days after notification by the department or failure to satisfactorily complete reclamation work on any segment of the permit area within 2 years or within a longer period that the department may permit on the permittee's application or on the department's own motion, after completion or abandonment of operations on any segment of the permit area, constitutes sufficient grounds for cancellation of a permit or license and refusal to issue another permit or license to the applicant. A cancellation action may not be effected while an appeal is pending from any ruling requiring the cancellation of a permit or license.

(8) (a) Except as provided in subsection (8)(f), the department may hold a permit suspended pursuant to 82-4-338 for up to 5 years and place the proceeds from a cash bond forfeited under this section in an interest-bearing account if mining of the ore body identified in the permit or a permit amendment application is not complete. The 5-year period begins on the date the department takes possession of the bond proceeds.

(b) The department may spend bond proceeds from the account during the suspension period to:

(i) perform maintenance, monitoring, and other actions required by the permit;

(ii) abate imminent danger to public health, public safety, or the environment; or

(iii) abate conditions that violate the provisions of Title 75, chapters 2 and 5, or conditions that may cause violations of those provisions.

(c) The department may transfer a permit suspended under this section as provided by 82-4-340 and the associated property interest pursuant to 70-30-311 to grant the condemnor immediate possession and provide compensation to the property owner pursuant to 70-30-302. The balance of funds in the account must be retained as a cash bond on behalf of the successor operator.

(d) A transfer by the department to a successor operator pursuant to subsection (2) may not affect a lien, claim, encumbrance, or interest in the property subject to operations, which the department determines is valid at the time of the transfer and rights and defenses associated with the lien, claim, encumbrance, or interest. This subsection (8)(d) does not apply to a lien, claim, encumbrance, or interest in a property of the original operator or an affiliate or person controlling the operator or affiliate.

(e) The department may revoke a permit suspended under this section if a transfer is not completed within 5 years of the suspension. In the case of a revoked permit, reclamation may proceed pursuant to subsection (6).

(f) The department may extend a suspension up to 6 months if a potential successor operator is exercising reasonable diligence to complete the transfer. If litigation precludes the transfer, the suspension is stayed until the litigation is resolved.

(g) If the department forfeits a bond pursuant to subsection (8)(a), the operator is liable to the department for the insufficient bond amount, which is the difference between the bond amount forfeited pursuant to 82-4-341 and the bond amount calculated pursuant to 82-4-338.

This amount is not subject to a bona fide dispute. The department may initiate cases and proceedings to recover the insufficient bond amount.

(9) (a) If at the time of bond review pursuant to 82-4-338 no mineral extraction or ore processing has occurred on a mine permit area for the past 5 years, the department shall determine whether further suspension of the operation will create conditions that will cause violations of Title 75, chapter 2 or 5, or significantly impair reclamation of disturbed areas. If the department determines in writing that violations of Title 75, chapter 2 or 5, or significant impairment of reclamation will occur, the department shall notify the permittee that the permittee shall, within a reasonable time specified in the notice, abate the conditions or commence reclamation. The department may grant reasonable extensions of time for good cause shown. If the permittee does not abate the conditions or commence reclamation within the time specified in the notice and any extensions, the department shall order either that the condition be abated or that reclamation be commenced.

(b) The permittee may request a hearing on the order by submitting a written request for hearing within 30 days of receipt of the order. A request for hearing stays the order pending a final decision, unless the department determines in writing that the stay will create an imminent threat of significant environmental harm or will significantly impair reclamation.

History: En. Sec. 13, Ch. 252, L. 1971; amd. Sec. 8, Ch. 281, L. 1974; R.C.M. 1947, 50-1213; amd. Sec. 3, Ch. 204, L. 1995; amd. Sec. 396, Ch. 418, L. 1995; amd. Sec. 6, Ch. 507, L. 1999; amd. Sec. 8, Ch. 488, L. 2001; amd. Sec. 3, Ch. 458, L. 2019; amd. Sec. 1, Ch. 566, L. 2023; amd. Sec. 2, Ch. 513, L. 2025.

Compiler's Comments

2025 Amendment — Code Commissioner Correction: See 2025 Session Law for amendment made by sec. 2, Ch. 513, L. 2025. Amendment effective May 8, 2025.

In (8)(a) the Code Commissioner substituted "subsection (8)(f)" for "subsection (8)(e)" to correct an erroneous reference.

Cross-References

Public contracts generally, Title 18, ch. 1.

Extent of surety's liability, 28-11-411.

Mining and exploration activity prohibited if bond forfeited — exception, 82-4-360.

82-4-342. Amendment to operating permits and exploration licenses — rulemaking — fees. (1) During the term of an operating permit or exploration license issued under this part, an operator or licensee may apply for a revision as described in subsections (6)(g) through (6)(l) or an amendment to the permit or license. The operator may not apply for an amendment to delete disturbed acreage except following reclamation, as required under 82-4-336, and bond release for the disturbance, as required under 82-4-338.

(2) (a) The department may by rule establish criteria for the classification of amendments to a permit or exploration license as major or minor. The department shall adopt rules establishing requirements for the content of applications for revisions and major and minor amendments and the procedures for processing revisions and minor amendments.

(b) An amendment must be considered minor if:

(i) it is for the purpose of retention of mine-related facilities that are valuable for postmining use;

(ii) evidence is submitted showing that a local government has requested retention of the mine- related facilities for a postmining use; and

(iii) the postmining use of the mine-related facilities meets the requirements provided for in 82-4-336.

(c) An operator or licensee who is applying for a minor amendment or revision shall pay to the department a fee of $100. This fee must be included with the next annual fee payment required under 82-4-332(1) or 82-4-339(3).

(3) (a) An application for a major amendment to an operating permit must be processed pursuant to 82-4-337.

(b) Except as specified under 82-4-343(3)(c) or as provided in subsection (3)(c) of this section, an operator applying for a major amendment to an operating permit shall pay to the department a fee of $5,000 at the time of the application.

(c) A person mining primarily rock products as defined in 82-4-303 shall pay to the department a fee of $500 for an application for a major amendment.

(4) An applicant for an amendment to an exploration license shall pay to the department a fee of:

(a) for amendments that include activities beneath the surface of the land, $500; or

(b) for amendments that include activities only on the surface of the land, $250.

(5) The department shall review an application for a revision or a minor amendment and provide a notice of decision on the adequacy of the application within 30 days. If the department does not respond within 30 days, then the permit is revised or amended in accordance with the application.

(6) The department is not required to prepare an environmental assessment or an environmental impact statement for the following categories of action and permit revisions:

(a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review pursuant to Title 75, chapter 1;

(b) administrative actions, such as routine, clerical, or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;

(c) repair or maintenance of the permittee's equipment or facilities;

(d) investigation and enforcement actions, such as data collection, inspection of facilities, or enforcement of environmental standards;

(e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts upon a given state of facts in a prescribed manner;

(f) approval of actions that are primarily social or economic in nature and that do not otherwise affect the human environment;

(g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative to the entire operation, provided that the increase is less than 25 acres or 10% of the permitted area, whichever is less;

(h) changes to an approved reclamation plan if the changes are consistent with this part and rules adopted pursuant to this part;

(i) changes in an approved operating plan for an activity that was previously permitted if the changes will be insignificant relative to the entire operation and the changes are consistent with subsection (6)(g);

(j) changes in a permit for the purpose of retention of mine-related facilities that are valuable for postmining use;

(k) modifications to a tailings storage facility that result in a minor expansion to the facility if:

(i) the proposed modification is certified by the seal of the engineer of record;

(ii) the capacity increase resulting from the expansion is no greater than 15% of the capacity of the existing tailings storage facility; and

(iii) the modification complies with 82-4-376(2)(l) and (2)(dd) and is exempt under subsection (6)(g), (6)(h), or (6)(i) of this section; and

(l) applications for rock product permits and amendments pursuant to 82-4-343.

History: **En. Sec. 3, Ch. 472, L. 1993; amd. Sec. 397, Ch. 418, L. 1995; amd. Sec. 4, Ch. 365, L. 2003; amd. Sec. 5, Ch. 410, L. 2011; amd. Sec. 14, Ch. 399, L. 2015; amd. Sec. 8, Ch. 152, L. 2021; amd. Sec. 103, Ch. 324, L. 2021; amd. Sec. 8, Ch. 634, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 8, Ch. 634, L. 2025. Amendment effective July 1, 2025.

82-4-343. Operating permit — rock products — fees. (1) A person may not engage in mining of rock products or disturb land in anticipation of mining rock products before obtaining a final operating permit from the department pursuant to this section.

(2) (a) A person mining rock products or a landowner allowing another person to mine rock products from the landowner's land may obtain an operating permit for a single site or multiple sites if the operation or operations cumulatively disturb no more than 100 acres of the earth's surface and the single site or each of the multiple sites do not:

(i) operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or ground water;

(ii) have any water impounding structures other than for storm water control;

(iii) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed as threatened or endangered under the Endangered Species Act of 1973; or

(iv) impact significant historic or archaeological features.

(b) A landowner who is a permittee and allows another person to mine on the landowner's land is responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission. The performance bond required under this part is and must be conditioned upon compliance with this part, the rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the landowner's consent.

(3) (a) Prior to receiving a final operating permit from the department, a person shall pay a basic permit application fee of $500. The department may require a person applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The department may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed $2,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(b) (i) Subject to subsection (3)(b)(ii), a contractor shall, at the request of the applicant, directly submit invoices of contractor expenses to the applicant.

(ii) A contractor's work is assigned, reviewed, accepted, or rejected by the department pursuant to this section.

(c) (i) A person applying for a minor amendment or revision to an operating permit shall pay to the department a fee of $100. This fee must be included with the next annual fee payment required by 82-4-339(3).

(ii) A person applying for a major amendment shall pay the department a fee of $500 at the time of the application.

(4) The person shall submit an application on a form provided by the department, which must contain the following information and any other pertinent data required by rule:

(a) the name and address of the operator, and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

(b) the rock products expected to be mined;

(c) a proposed reclamation plan;

(d) the expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;

(f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area, provided that the department is not required to verify this information;

(g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;

(h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;

(i) the types of access roads to be built and manner of reclamation of road sites on abandonment;

(j) a plan that will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(5) A person may not be issued an operating permit if:

(a) that person's failure, or the failure of any firm or business association of which that person was a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or the completion of reclamation by the person's surety or by the department, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305; or

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(6) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (4)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by 82-4-335(9)(a)(i) or (9)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members.

(7) The department's action on an application submitted under this section does not require an environmental review under Title 75, chapter 1, for the following:

(a) an application for a new permit resulting in less than 15 acres of total disturbance;

(b) an application to amend a permit resulting in less than 15 acres of total disturbance; and

(c) an application to amend a permit that has been analyzed under Title 75, chapter 1, that results in less than 25 acres of new disturbance.

History: En. Sec. 4, Ch. 152, L. 2021; amd. Sec. 9, Ch. 634, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 9, Ch. 634, L. 2025. Amendment effective July 1, 2025.

82-4-344 through 82-4-348 reserved.

82-4-349. Limitations of actions — venue. (1) Legal actions seeking review of a department decision granting or denying an exploration license or operating permit issued under this part must be filed within 90 days after the decision is made. Summons must be issued and process served on all defendants within 60 days after the action is filed.

(2) An action to challenge the issuance of a license or permit pursuant to this part must be brought in the county in which the exploration or permitted activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the exploration or activity is proposed to occur.

(3) A judicial challenge to an exploration license or operating permit issued pursuant to this part by a party other than the license or permitholder or applicant must include the party to whom the license or permit was issued unless otherwise agreed to by the license or permitholder or applicant. All judicial challenges of licenses or permits for projects with a project cost, as determined by the court, of more than $1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

History: En. Sec. 1, Ch. 472, L. 1993; amd. Sec. 398, Ch. 418, L. 1995; amd. Sec. 7, Ch. 507, L. 1999; amd. Sec. 32, Ch. 361, L. 2003; amd. Sec. 16, Ch. 337, L. 2005.

82-4-350. Award of costs and attorney fees. When issuing a final order in an action challenging the grant or denial of an exploration license or operating permit issued under this part, the court may award costs of litigation, including reasonable attorney and expert witness fees, to a prevailing or substantially prevailing party whenever, in its discretion, the court determines an award is appropriate.

History: En. Sec. 2, Ch. 472, L. 1993.

82-4-351. Reasons for denial of permit. (1) An application for a permit or an application for an amendment to a permit may be denied for the following reasons:

(a) the plan of operation or reclamation conflicts with Title 75, chapter 2, as amended, Title 75, chapter 5, as amended, Title 75, chapter 6, as amended, or rules adopted pursuant to these laws;

(b) the reclamation plan does not provide an acceptable method for accomplishment of reclamation as required by this part.

(2) A denial of a permit must be in writing, state the reasons for denial, and be based on a preponderance of the evidence.

History: En. Sec. 14, Ch. 252, L. 1971; R.C.M. 1947, 50-1214; amd. Sec. 1, Ch. 174, L. 1979; amd. Sec. 7, Ch. 453, L. 1985; amd. Sec. 6, Ch. 472, L. 1993.

82-4-352. Reapplication with new reclamation plan. A permit may be denied and returned to the applicant with a request that the application be resubmitted with a different plan for reclamation. The person making application for a permit may then resubmit to the department a new plan for reclamation.

History: En. Sec. 15, Ch. 252, L. 1971; R.C.M. 1947, 50-1215; amd. Sec. 399, Ch. 418, L. 1995.

82-4-353. Administrative remedies — notice — appeals — parties. (1) Upon receipt of an application for an operating permit, the department shall provide notice of the application by publication in a newspaper of general circulation in the area to be affected by the operation. The notice must be published once a week for 3 successive weeks.

(2) An applicant for a permit or license or for an amendment or revision to a permit or license may request a hearing on a denial of the application by submitting a written request for a hearing within 30 days of receipt of written notice of the denial. The request must state the reason that the hearing is requested.

(3) All hearings and appeals under 82-4-337(4), 82-4-338(3)(b), 82-4-341(7) and (9), 82-4-361, 82-4-362, and subsection (2) of this section must be conducted by the board in accordance with the Montana Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an action taken pursuant to this part may become a party to any proceeding held under this part upon a showing that the person is capable of adequately representing the interests claimed.

(4) As used in this section, "person" means any individual, corporation, partnership, or other legal entity.

History: En. Sec. 16, Ch. 252, L. 1971; amd. Sec. 9, Ch. 281, L. 1974; amd. Sec. 1, Ch. 313, L. 1975; amd. Sec. 2, Ch. 427, L. 1977; R.C.M. 1947, 50-1216; amd. Sec. 12, Ch. 79, L. 2001; amd. Sec. 6, Ch. 410, L. 2011; amd. Sec. 4, Ch. 458, L. 2019.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

82-4-354. Mandamus to compel enforcement. (1) A person having an interest that is or may be adversely affected, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule, may bring the failure to the attention of the public officer or employee by an affidavit stating the specific facts of the failure. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed for false swearing, as provided in 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the affidavit to enforce the requirement or rule, the affiant may bring an action of mandamus in the district court of the first judicial district or in the district court of the county in which the land is located. If the court finds that a requirement of this part or a rule adopted under this part is not being enforced, it shall order the public officer or employee to perform the

duties. If the officer or employee fails to do so, the public officer or employee must be held in contempt of court and is subject to the penalties provided by law.

(3) A person having an interest that is or may be adversely affected may commence a civil action to compel compliance with this part against a person for the violation of this part or any rule, order, or permit issued under it. However, an action may not be commenced:

(a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged violator; or

(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part or any rule, order, or permit issued under it. A person having an interest that is or may be adversely affected may intervene as a matter of right in the civil action.

(4) Legal actions under subsection (3)(a) must be brought in the district court of the county in which the alleged violation occurred.

(5) Nothing in this section restricts any right of any person under any statute or common law to seek enforcement of this part or the rules adopted under it or to seek any other relief.

History: En. Sec. 4, Ch. 345, L. 1985; amd. Sec. 1, Ch. 535, L. 1997; amd. Sec. 48, Ch. 535, L. 2021.

Cross-References

Mandamus — writ of mandate, Title 27, ch. 26.

82-4-355. Action for damages to water supply — replacement. (1) An owner of an interest in real property who obtains all or part of the owner's supply of water for beneficial uses, as defined in 85-2-102, from an underground source other than a subterranean stream having a permanent, distinct, and known channel may sue the operator engaged in an operation for which a license is required pursuant to 82-4-332 or for which a permit is required pursuant to 82-4-335 to recover damages for loss in quality or quantity of the water supply resulting from mining or exploration. The owner is required to exhaust the administrative remedy under subsection (2) prior to filing suit.

(2) (a) An owner described in subsection (1) may file a complaint with the department detailing the loss in quality or quantity of water. Upon receipt of a valid complaint, the department:

(i) shall investigate the statements and charges in the complaint using all available information, including monitoring data gathered at the exploration or mine site;

(ii) may require the operator, if necessary, to install monitoring wells or other practices that may be needed to determine the cause of water loss, if there is a loss, in terms of quantity and quality;

(iii) shall issue a written finding specifying the cause of the water loss, if there is a loss, in terms of quantity and quality;

(iv) shall, if it determines that the preponderance of evidence indicates that the loss is caused by an exploration or mining operation, order the operator, in compliance with Title 85, chapter 2, to provide the needed water immediately on a temporary basis and within a reasonable time replace the water in like quality, quantity, and duration. If the water is not replaced, the department shall order the suspension of the operator's exploration or operating permit until the operator provides substitute water, except that nothing in this section preempts the application of Title 85, chapter 2. The operator may not be required to replace a junior right if the operator's withdrawal or dewatering is not in excess of the operator's senior right.

(b) If the department determines that there is a great potential that surface or subsurface water quality and quantity may be adversely affected by a mining or exploration operation, the operator shall install a water quality monitoring program or a water quantity monitoring program, or both, which must be approved by the department prior to the commencement of exploration or mining.

History: En. Sec. 5, Ch. 345, L. 1985; amd. Sec. 8, Ch. 637, L. 1991; amd. Sec. 2734, Ch. 56, L. 2009.

Cross-References

Waste and contamination of ground water prohibited, 85-2-505.

82-4-356. Action in response to complaints related to use of explosives. (1) An owner of an interest in real property or an individual who resides within an area subject to property damage or safety hazards related to the use of explosives by any person subject to the provisions of this part may file a complaint with the department, describing the alleged property damage or safety hazards. The complainant shall provide credible evidence to the department to substantiate allegations of property damage or safety hazards.

(2) Upon receipt of a complaint, the department:

(a) shall investigate the statements and charges in the complaint, using all available information, including mine or exploration blasting records and other data obtained through an examination of the dwelling, structure, or site identified in the complaint;

(b) may conduct tests and make measurements, including reasonable efforts to replicate conditions that may have caused property damage or safety hazards, and may require the allegedly responsible person to cooperate as necessary to investigate the complaint;

(c) shall issue a written finding specifying the cause of any property damage or safety hazards that are validated by the investigation; and

(d) shall, if it determines that the preponderance of evidence indicates that property damage or safety hazards are or were caused by exploration or mining activities, order the responsible person to make changes in the use of explosives or other appropriate mitigation to alleviate property damage or safety hazards.

History: En. Sec. 1, Ch. 443, L. 1989.

Cross-References

Reckless or malicious use of explosives, 45-8-333.

Seismic geophysical exploration, Title 82, ch. 1, part 1.

Proof of insurance covering use of explosives in strip- or underground-coal-mining and reclamation operations required, 82-4-222.

Regulation of use of explosives in reclamation, 82-4-231.

82-4-357. Abatement of environmental emergencies. (1) Whenever an environmental emergency exists, as determined by the department, at an active, temporarily abandoned, or permanently abandoned exploration, mining, ore processing, or hard-rock mill site, the department may enter the site and may apply for and, if approved by the governor, use the funds in the environmental contingency account created in 75-1-1101 to abate the situation on either a temporary or a permanent basis, or both.

(2) The department may bring an action against the operator to recover the abatement costs in the district court of the first judicial district in Lewis and Clark County. Nothing in this section affects the right of the department to retain or pursue forfeiture of any bond posted pursuant to 82-4-338. Expenditures from the environmental contingency account that are recovered under this subsection must be deposited in the environmental contingency account.

History: En. Sec. 9, Ch. 637, L. 1991.

Cross-References

Environmental contingency account objectives, 75-1-1101.

82-4-358 and 82-4-359 reserved.

82-4-360. When activity prohibited — exception. (1) Except as provided in subsection (2), a person may not conduct mining or exploration activities in this state if that person or any firm or business association of which that person was a principal or controlling member had a bond forfeited under this part, if the department otherwise received proceeds from a surety to perform reclamation on that person's behalf, or if the person's surety completed reclamation on the person's behalf.

(2) A person described in subsection (1) may apply for an operating permit or an exploration license or may conclude a written agreement under 82-4-305 if:

(a) that person pays to the department:

(i) the full amount of the necessary expenses incurred by the department under 82-4-341(6) for reclamation of the area for which the bond was forfeited;

(ii) the full amount of any penalties assessed under this part; and

(iii) interest on the expenses incurred and penalties assessed at the rate of 6% a year; and

(b) the person demonstrates and the department determines that the person has remedied the conditions that led to the bond forfeiture or receipt of the bond proceeds and that those conditions no longer exist.

History: En. Sec. 7, Ch. 93, L. 1989; amd. Sec. 400, Ch. 418, L. 1995; amd. Sec. 296, Ch. 42, L. 1997; amd. Sec. 9, Ch. 488, L. 2001.

82-4-361. Violation — penalties — waiver. (1) When the department has reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, an administrative deficiency notice, or a term or condition of a permit issued under this part, it shall send a letter of warning or violation to the person. The letter of warning or violation must describe the provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The letter must recommend corrective actions necessary to return to compliance. Issuance of a letter of warning or violation under this subsection does not limit the authority of the department under this part to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.

(2) (a) By issuance of an order pursuant to subsection (6), the department may assess an administrative penalty of not less than $100 or more than $1,000 for each of the following violations and an additional administrative penalty of not less than $100 or more than $1,000 for each day during which the violation continues and may bring an action for an injunction from continuing the violation against:

(i) a person or operator who violates a provision of this part, a rule adopted or an order issued under this part, or a term or condition of a permit; or

(ii) any director, officer, or agent of a corporation who purposely or knowingly authorizes, orders, or carries out a violation of a provision of this part, a rule adopted or an order issued under this part, or a term or condition of a permit.

(b) If the violation created an imminent danger to the health or safety of the public or caused significant environmental harm, the maximum administrative penalty is $5,000 for each day of violation.

(c) This subsection does not limit the authority of the department to bring a judicial action for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this part.

(3) The department may bring a judicial action seeking a penalty of not more than $5,000 for a violation listed in subsection (2)(a) and a penalty of not more than $5,000 for each day that the violation continues.

(4) Penalties assessed under this section must be determined in accordance with the penalty factors in 82-4-1001.

(5) The department may bring an action for a restraining order or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order issued under this part.

(6) (a) In addition to the letter of warning or violation sent pursuant to subsection (1), the department may also issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The order may require necessary corrective action within a reasonable period of time, may assess an administrative penalty determined in accordance with this section, or both. The order must be served personally or by certified mail.

(b) An order issued pursuant to subsection (6)(a) becomes final unless, within 30 days after the order is served, the person to whom the order is issued submits to the board a written request for a hearing stating the reason for the request. Service of the order by mail is complete 3 business days after mailing. If a request for a hearing is submitted, a hearing must be held within a reasonable time under the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the board shall affirm, modify, or rescind the order.

(7) Legal actions for penalties or injunctive relief under this section must be brought in the district court of the county in which the alleged violation occurred.

(8) For the purposes of this section, "administrative deficiency" means a deficiency in reporting, recordkeeping, fee payment, or notification that the department determines is minor in nature, nonsubstantive, and unlikely to recur.

History: En. Sec. 22, Ch. 252, L. 1971; amd. Sec. 11, Ch. 281, L. 1974; R.C.M. 1947, 50-1222; amd. Sec. 1, Ch. 284, L. 1985; amd. Sec. 3, Ch. 386, L. 1985; amd. Sec. 5, Ch. 93, L. 1989; amd. Sec. 2, Ch. 283, L. 1991; amd. Sec. 4, Ch. 204, L. 1995; amd. Sec. 1, Ch. 271, L. 1997; amd. Sec. 4, Ch. 273, L. 1997; amd. Sec. 2, Ch. 535, L. 1997; amd. Sec. 13, Ch. 79, L. 2001; amd. Sec. 2, Ch. 486, L. 2005; amd. Sec. 26, Ch. 487, L. 2005; amd. Sec. 49, Ch. 535, L. 2021; amd. Sec. 1, Ch. 191, L. 2023.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.
Judicial review of contested cases, Title 2, ch. 4, part 7.
Injunctions, Title 27, ch. 19.
Criminal responsibility of corporations, 45-2-311.
Disposition of fines and penalties, 46-18-603, 82-4-311.
Person defined, 82-4-303.
Small-miner exemption, 82-4-305.
Penalties, fees, and interest, Title 82, ch. 4, part 10.

82-4-362. Suspension of permits — hearing. (1) If any of the requirements of this part, of the rules adopted under this part, or of a license or permit has not been complied with, the department shall serve a notice of violation on the licensee or permittee or, if necessary, the director shall order the suspension of the license or permit. A license or permit may also be suspended for failure to comply with an order to pay a civil penalty if the order is not subject to administrative or judicial review. The director may order immediate suspension of a license or permit whenever the director finds that a violation of this part, of the rules adopted under this part, or of a license or permit is creating an imminent danger to the health or safety of persons outside the permit area. The notice or order must be handed to the licensee or permittee in person or served on the licensee or permittee by certified mail addressed to the permanent address shown on the application for a license or permit. The notice of violation or order of suspension must specify the provision of this part, the rules adopted under this part, or the license or permit violated and the facts alleged to constitute the violation and must, if the violation has not been abated, order abatement within a specified time period.

(2) If the licensee or permittee has not complied with the requirements set forth in the notice of violation or order of suspension within the time limits set in the notice or order, the license or permit may be revoked by order of the department and the performance bond forfeited to the department. The notice of violation or order of suspension must state when those measures may be undertaken and must give notice of the opportunity for a hearing before the board. A hearing may be requested by submitting a written request stating the reason for the request to the board within 30 days after receipt of the notice or order. If a hearing is requested within the 30-day period, the license or permit may not be revoked and the bond may not be forfeited until a final decision is made by the board.

(3) If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not comply within 30 days of receipt of the notice, the director shall suspend the permit. The director shall reinstate the permit upon compliance.

History: En. 50-1225 by Sec. 12, Ch. 281, L. 1974; R.C.M. 1947, 50-1225; amd. Sec. 2, Ch. 284, L. 1985; amd. Sec. 6, Ch. 93, L. 1989; amd. Sec. 3, Ch. 283, L. 1991; amd. Sec. 7, Ch. 598, L. 1993; amd. Sec. 5, Ch. 204, L. 1995; amd. Sec. 401, Ch. 418, L. 1995; amd. Sec. 14, Ch. 79, L. 2001.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

82-4-363 through 82-4-366 reserved.

82-4-367. Long-term or perpetual water treatment permanent trust fund. (1) There is established a fund of the permanent fund type to pay exclusively for the cost to the state of long-term or perpetual water treatment at the Zortman and Landusky mine sites.

(2) The fund is financed with:

(a) funds transferred from the orphan share account pursuant to 75-10-743; and

(b) other sources of funding that the legislature or congress may from time to time provide.

(3) The fund must be invested by the board of investments pursuant to Title 17, chapter 6, part 2, and the earnings from the investment must be credited to the principal of the fund until the year 2018.

(4) The annual earnings on the fund for the year 2018 and for each succeeding year may be appropriated for the purposes of subsection (1).

(5) The principal of the fund must remain inviolate unless appropriated by a vote of two-thirds of the members of each house of the legislature. An appropriation of the principal may only be made for payment of the costs of long-term or perpetual water treatment at the Zortman and Landusky mine sites.

History: En. Sec. 1, Ch. 278, L. 2005.

82-4-368 through 82-4-370 reserved.

82-4-371. Reclamation of abandoned mine sites. (1) Agents, employees, or contractors of the department may enter upon property for the purpose of conducting studies or exploratory work to determine whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or prevention of the adverse effects of past mining practices. The department may bring an injunctive action to restrain interference with the exercise of the right to enter and inspect granted in this subsection.

(2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding that:

(i) land or water resources on the property have been adversely affected by past mining practices;

(ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the property or to abate, control, or prevent the adverse effects should be taken; and

(iii) the owners of the land or water resources where entry must be made to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices.

(b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or contractors of the department may enter upon property adversely affected by past mining practices and other property necessary for access to the adversely affected property to do all things necessary or expedient to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:

(i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or

(ii) if neither is known, posting notice upon the property and advertising in a newspaper of general circulation in the county in which the property lies.

(c) Entry upon property pursuant to this section is not an act of condemnation of property or of trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(3) The department may acquire the necessary property by gift or purchase. A gift or purchase must be approved by the board of land commissioners. If the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) acquisition of the property is necessary for successful reclamation;

(b) the acquired property after restoration or reclamation or after abatement, control, or prevention of the adverse effects of past mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the adverse effects of past mining practices; or

(ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past mining practices.

(4) The department may record in the office of the clerk and recorder in the county in which property that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been mined and reclaimed. The notice must include the date and a brief description of the reclamation.

History: En. Sec. 2, Ch. 329, L. 1995; amd. Sec. 2, Ch. 78, L. 2009; amd. Sec. 104, Ch. 324, L. 2021.

Cross-References

Fees of County Clerk, 7-4-2631.

Injunctions, Title 27, ch. 19.

82-4-372. Filing of lien for abandoned mine reclamation project. (1) Before commencement of a project using public funds to restore or reclaim property or to abate, control, or prevent adverse effects of past mining practices on private property, the department may file a notice of the right to claim a lien in the clerk and recorder's office in the county in which the majority of the property lies.

(2) If the department expends or allocates public funds conducting mine reclamation work under this part and if the department determines, based on an appraisal by an independent qualified appraiser chosen by the department, that the work has resulted or will result in a significant increase in the fair market value of property, the department may file a lien against the property reclaimed.

(3) Within 6 months after the completion of the project, the department shall itemize the funds expended and may file a lien statement. The lien statement must include:

(a) the value of the property before commencing the work of restoration or reclamation or abatement, control, or prevention of adverse effects of the past mining practices;

(b) the value of the property after the work has been completed;

(c) a listing of the appraisal upon which the values in subsections (3)(a) and (3)(b) are based and the location where those appraisals may be examined;

(d) the amount of public funds spent by the department on the project; and

(e) the amount of the lien.

(4) The amount of the lien must be the lesser of either the increase in the value of the property or the amount of public funds actually expended by the department.

(5) A lien may not be filed under this section against the property of a person who owned the surface rights prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this part.

(6) If a lien is filed, the department shall send, by certified mail to the owner's last-known address, copies of the lien, the statement of costs, and the appraisals to the owner of record of the property.

(7) The lien provided in this section is effective as of the date of expenditure of the public funds and has priority over all other liens or security interests that have attached to the property that is the subject of the lien, whenever those liens may have arisen, second only to real estate taxes imposed upon the property.

(8) Within 60 days after the department files the lien, the owner of the property to which the lien provided for in this section attaches may petition the district court for the county in which the majority of the property is located asking the district court to resolve disputes regarding the amount of actual funds spent by the department or to determine the increase in the market value of the property as a result of the restoration or reclamation or abatement, control, or prevention of the adverse effects of past mining practices. If it differs from the department's statement, the amount found by the court to be the lesser of the actual funds spent or the increase in market value is the amount of the lien and that amount must be recorded with the department's statement.

(9) A lien placed on property under this section may be satisfied by payment to the department of the amount of the lien. The department may accept partial payments on terms and conditions that the department specifies, but the lien is satisfied only to the extent of the value of the consideration received. A lien must be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Unsatisfied portions remain as a lien on the property. When a lien is partially or wholly satisfied, the department shall file with the clerk and recorder with whom the lien is filed an instrument releasing the lien in whole or in part.

(10) A lien placed on property under this section renews automatically, without a requirement on the part of the department to file a continuation notice, until the time that the lien is fully satisfied. Interest is payable on unsatisfied liens or portions of the liens provided for in this section, and it must be accumulated at the rate of 10% a year and may not be compounded.

(11) Funds derived from the satisfaction of liens established under this part must be deposited in the abandoned mine reclamation fund account from which the project was funded.

History: En. Sec. 3, Ch. 329, L. 1995.

Cross-References

Liens — generally, Title 71, ch. 3, part 1.

82-4-373 and 82-4-374 reserved.

82-4-375. Engineer of record — duties. (1) An operator with an existing tailings storage facility shall provide the department with written designation of an engineer of record, including contact information, within 180 days after October 1, 2015.

(2) An application for a permit pursuant to 82-4-335 or an amendment that will include a tailings storage facility must include the designation of an engineer of record and contact information.

(3) The engineer of record may not be an employee of an operator or permit applicant. The engineer of record shall:

(a) review designs and other documents pertaining to tailings storage facilities required by this part;

(b) certify and seal designs or other documents pertaining to tailings storage facilities submitted to the department;

(c) complete an annual inspection of the tailings storage facility as required in 82-4-381;

(d) notify the operator when credible evidence indicates the tailings storage facility is not performing as intended; and

(e) immediately notify the operator and the department when credible evidence indicates that a tailings storage facility presents an imminent threat or a high potential for imminent threat to human health or the environment.

(4) The engineer of record, operator, or permit applicant shall notify the department in writing if there is a change in the engineer of record.

(5) If the operator or permit applicant does not designate an engineer of record or replace an engineer of record within 90 days of receipt of notification that the engineer is no longer the engineer of record, the department shall order suspension of the deposition of tailings until an engineer of record is established pursuant to this section.

History: En. Sec. 4, Ch. 399, L. 2015.

82-4-376. Tailings storage facility — design document — fee. (1) An operator or a permit applicant proposing to construct a new tailings storage facility, an operator that is constructing a new tailings storage facility, or an operator proposing to expand an existing tailings storage facility shall submit to the department a design document and a $1,500 fee.

(2) The design document must contain:

(a) the certification of the engineer of record;

(b) a detailed description of the proposed facility and site characteristics;

(c) maps, sections, and appurtenances design drawings in both hard copy and electronic format with sufficient detail for an independent review;

(d) the raw data files for models used in developing and evaluating the design;

(e) an evaluation indicating that the proposed tailings storage facility will be designed, operated, monitored, and closed using the most applicable, appropriate, and current technologies and techniques practicable given site-specific conditions and concerns;

(f) a site geotechnical investigation commensurate in detail and scope with the complexity of the site geology and proposed tailings storage facility design. The investigation must include a geological model of site conditions and a rationalization of the site investigation process.

(g) a demonstration through site investigation, laboratory testing, geotechnical analyses, and other appropriate means that the tailings, embankment, and foundation materials controlling slope stability are not susceptible to liquefaction or to significant strain-weakening under the anticipated static or cyclic loading conditions, to the extent that the amount of estimated deformation under the loading conditions would result in loss of containment;

(h) for a new tailings storage facility, design factors of safety against slope instability not less than:

(i) 1.5 for static loading under normal operating conditions, with appropriate use of undrained shear strength analysis for saturated, contractive materials;

(ii) 1.3 for static loading under construction conditions if the independent review panel created pursuant to 82-4-377 agrees that site-specific conditions justify the reduced factor of safety and that the extent and duration of the reduced factor of safety are acceptable; and

(iii) 1.2 for postearthquake, static loading conditions with appropriate use of undrained analysis and selection of shear strength parameters. Under these conditions, a postearthquake factor of safety less than 1.2 but greater than 1.0 may be accepted if the amount of estimated deformation does not result in loss of containment.

(i) for a new tailings storage facility, an analysis showing that the seismic response of the tailings storage facility does not result in the uncontrolled release of impounded materials or other undesirable consequences when subject to the ground motion associated with the 1-in-10,000-year event, or the maximum credible earthquake, whichever is larger. Any numeric analysis of the seismic response must be calculated for the normal maximum loading condition with steady-state seepage. The analysis must include, without limitation, consideration of:

(i) anticipated ground motion frequency content;
(ii) fundamental period and dynamic response;
(iii) potential liquefaction;
(iv) loss of material strength;
(v) settlement;
(vi) ground displacement;
(vii) deformation; and
(viii) the potential for secondary failure modes.

(j) if a pseudo-static stability analysis is performed to support the design, a justification for the use of the method with respect to the anticipated response to cyclic loading of the tailings facility structure and constituent materials. The calculations must be accompanied by a description of the assumptions used in deriving the seismic coefficient.

(k) reduced factors of safety or seismic design criteria if the independent review panel agrees that site-specific conditions justify that design to the specified requirements of factors of safety or seismic design criteria in this section is not necessary;

(l) for expansion of an existing tailings storage facility, either an analysis showing the proposed expansion meets the minimum design requirements for a new tailings storage facility under this section or an analysis showing the proposed expansion does not reduce the tailings storage facility's original design factors of safety and seismic event design criteria;

(m) a probabilistic and deterministic seismic evaluation for the area and assessment of peak horizontal ground acceleration;

(n) a dam breach analysis, a failure modes and effects analysis or other appropriate detailed risk assessment, and an observational method plan addressing residual risk;

(o) a description of the chemical and physical properties of the materials and process solutions to be stored in the tailings storage facility;

(p) when appropriate, depending on the chemical and physical properties of the materials, a detailed description of how undesirable constituents contained in the impoundment will be isolated from the environment;

(q) a description of the tailings storage facility capacity over time and the estimated ultimate capacity;

(r) specifications for impoundment construction, including the specifications for the foundation, abutments, embankment, means of containment, and the borrow materials;

(s) a construction management plan that includes, at a minimum, parameters and levels of acceptability to be monitored during construction for quality control and quality assurance purposes. The frequency of sampling, the amount of oversight, the qualifications of the oversight personnel, and the role of the panel during and after construction must be specified and agreed to by the panel.

(t) a list of quantitative performance parameters for construction, operation, and closure of the tailings storage facility. The quantitative performance parameters may be expressed as minimums or maximums for embankment crest width, embankment slopes, beach width, operating pool volume, phreatic surface elevation in the embankment and foundation, pore pressures, or other parameters appropriate for the facility and location.

(u) a list of the assumptions used during the analysis and design of the facility and a description justifying the validity of each assumption;

(v) a description of how the design integrates into a closure plan that facilitates, to the extent possible, dam decommissioning resulting in a maintenance-free closure;

(w) requirements for postclosure monitoring, inspection, and review, including the frequency of engineer of record inspections, independent panel reviews, and retention of an engineer of record;

(x) a description of proposed risk management measures for each facility life-cycle stage, including construction, operation, and closure;

(y) a detailed water balance, evidence of calibration if available, and the raw data used to develop the water balance;

(z) a detailed description of how water, seepage, and process solutions are to be routed or managed during construction, operation, and closure;

(aa) a detailed description of storm water controls, including diversions, storage, freeboard, and how extreme storm events will be managed;

(bb) a design storm event for operation and closure conforming to current engineering best practices for the type of facility proposed that includes:

(i) a rationale for the selection of the design storm event;

(ii) the magnitude of the design storm event;

(iii) the magnitude of runoff generated by the design storm event to and around the impoundment; and

(iv) evidence that the dynamic nature of climatology was considered;

(cc) for a new tailings storage facility, design sufficient to store:

(i) the probable maximum flood event plus maximum operating water or solution volume plus sufficient freeboard for wave action; or

(ii) a flood event design criterion less than the probable maximum flood but greater than the 1-in-500-year, 24-hour event if the panel agrees that site-specific conditions justify that design to the probable maximum flood standard is unnecessary;

(dd) for an expansion of an existing tailings storage facility, either an analysis that the proposed expansion meets the minimum requirements in this section to manage storm or flood events or an analysis that the expansion does not reduce the tailings storage facility's ability to store or otherwise manage the original facility design storm or flood events; and

(ee) any other information, drawings, maps, detailed descriptions, or data to assist the panel in determining if the new or expanded tailings storage facility protects human health and the environment.

(3) The design document must be submitted prior to the issuance of the draft permit pursuant to 82-4-337.

History: **En. Sec. 5, Ch. 399, L. 2015.**

82-4-377. Independent review panel — selection — duties. (1) (a) The operator or permit applicant shall identify at least three independent review panel members to serve on the independent review panel and shall submit those names to the department. The department may reject any proposed panel members. If the department rejects a proposed panel member, the operator or permit applicant shall continue to select independent review panel members until at least three panel members are approved by the department.

(b) The independent review panel must consist of a majority of licensed engineers as described in 82-4-303(13)(a).

(c) An independent review panel member, as defined in 82-4-303, may not be held individually liable for any act or omission made in the course and scope of their capacity as a department-approved panel member on an independent review panel pursuant to this part.

(2) An independent review panel member may not be an employee of:

(a) an operator or permit applicant; or

(b) the design consultant, the engineer of record, or the constructor.

(3) The operator or permit applicant shall contract with panel members, process invoices, and pay costs.

(4) A representative of the department and a representative of the operator or permit applicant may participate on the panel, but they are not members of the panel and their participation is nonbinding on the review of the design document.

(5) The engineer of record is not a member of the panel but shall participate in the panel review of the design document.

(6) The operator or permit applicant shall provide each panel member with a copy of the design document and other information requested by the panel members.

(7) The panel members shall review the design document required pursuant to 82-4-376, underlying analysis, and assumptions for consistency with this part. The panel members shall assess the practicable application of current technology in the proposed design.

(8) Following the review of the design document, the panel members shall prepare a written report signed by each panel member that summarizes the review. The written report may include recommended modifications to the design document for consistency with this part. The panel members shall provide the written report to the operator or permit applicant and the department. The panel members' determination is conclusive.

(9) (a) If the written report does not contain any recommended modification to a design document, the engineer of record shall certify the completed design document. The operator or permit applicant shall submit the final design document to the department pursuant to 82-4-376.

(b) If a written report contains recommended modifications to the design document,the engineer of record shall modify the design document to address the recommended modifications and shall submit the revised designed document to the panel members for review. Following written concurrence from the panel members that the revised design document adequately addresses the recommended modifications stated in the written report, the engineer of record shall certify the completed design document. The operator or permit applicant shall submit the final design document to the department pursuant to 82-4-376. The panel members' determination is conclusive.

(10) For an expansion of a tailings storage facility for which the original design document was approved by the department, the operator shall make a reasonable effort to retain the previous panel members. To replace a panel member, the process in subsection (1) must be followed.

History: En. Sec. 6, Ch. 399, L. 2015; amd. Sec. 4, Ch. 504, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 504, L. 2025. Amendment effective May 8, 2025.

82-4-378. Quality assurance during construction. (1) An operator constructing a new or expanded tailings storage facility shall:

(a) when indicated by the construction management plan, engage a professional engineer or other oversight specified in the plan to implement the construction management plan specified in the final design document. The professional engineer must be an employee of the engineer of record or an employee of the design firm represented by the engineer of record but may not be an employee of the constructor or the operator.

(b) ensure the collection of all records, including as-built plans and specifications, necessary to demonstrate that the tailings storage facility is constructed as specified in the final design document;

(c) when indicated by the construction management plan, secure a certification from the professional engineer for the records generated by the implementation of the quality assurance monitoring as specified in the final design document; and

(d) submit to the department the records collected during the quality assurance monitoring specified in the approved design document for all tailings storage facility construction conducted during a calendar year in the annual report required by the facility's operating permit or an independent submittal at the completion of the construction activity.

(2) After an appropriate investigation and consultation with the operator, the department shall, pursuant to 82-4-362, order the suspension of tailings storage facility construction activities if credible evidence is observed, submitted, or otherwise obtained that construction activities are not being conducted as specified in the design document.

History: En. Sec. 7, Ch. 399, L. 2015.

82-4-379. Tailings operation, maintenance, and surveillance manual. (1) A tailings operation, maintenance, and surveillance manual is required for a tailings storage facility.

(2) For a tailings storage facility that exists on or before October 1, 2015, the tailings operation, maintenance, and surveillance manual must be developed within 180 days of October 1, 2015. For a tailings storage facility proposed after October 1, 2015, the tailings operation,

maintenance, and surveillance manual must be developed prior to issuance of the draft permit pursuant to 82-4-337.

(3) The operator or permit applicant shall develop the manual, which must contain:

(a) an identification of the roles and responsibilities of the agents of the operator of the tailings storage facility. The specific organizational role with ultimate responsibility for the tailings storage facility must be identified as the senior ranking agent of the operator at the site of the tailings storage facility.

(b) an identification of necessary maintenance and frequency of maintenance to safely operate the tailings storage facility;

(c) an identification of training needs and training plans for persons with responsibilities identified in the manual;

(d) an identification of operational aspects employed to facilitate, to the extent possible, a maintenance-free closure;

(e) an identification of all inspections and monitoring and the frequency of inspections and monitoring to ensure that the tailings storage facility is performing as intended;

(f) an identification of monitoring and data collection necessary to maintain and calibrate the tailings storage facility's water balance;

(g) a description of how issues identified by routine inspection or monitoring will be resolved and how the progress toward resolution is tracked;

(h) a listing of quantitative performance parameters for construction, operation, and closure. The quantitative performance parameters may be expressed as minimums or maximums for parameters such as embankment crest width, embankment slopes, beach width, operating pool volume, phreatic surface elevation in the embankment and foundation, pore pressures, or other parameters appropriate for the facility and location.

(i) an emergency preparedness and response plan based on the failure modes and effects analysis or other appropriate risk assessment;

(j) an identification of specific trigger levels or events when the department and the engineer of record are immediately notified. When possible, trigger levels must be sufficiently conservative to allow time for corrective actions to be implemented.

(k) any other information necessary to ensure that the tailings storage facility is operated and maintained, is performing, and can be closed as intended.

(4) The engineer of record shall certify by seal that:

(a) the tailings operation, maintenance, and surveillance manual is consistent with the facility's design;

(b) the inspections and monitoring described in the tailings operation, maintenance, and surveillance manual are reasonably sufficient to ensure the tailings storage facility will perform as intended and will reasonably be expected to detect deviations if they occur; and

(c) the emergency preparedness and response plan describes reasonable measures that can be taken to protect human health and the environment.

(5) The operator shall review the tailings operation, maintenance, and surveillance manual annually to ensure that the manual reflects current conditions. Any revision of the manual during operation or at closure must be certified by the seal of the engineer of record.

History: En. Sec. 8, Ch. 399, L. 2015.

82-4-380. Periodic review required. (1) Following department approval of a design document pursuant to 82-4-376 during mining, or as required in a reclamation plan approved pursuant to 82-4-336, the operator shall assemble a panel in accordance with the panel requirements in 82-4-377. A reasonable effort must be made to retain previous panel members. The operator shall assemble the panel at a frequency to be determined by the panel, except that the panel shall assemble:

(a) 6 months prior to the anticipated start of initial construction of the new tailing storage facility and not less than annually afterward until construction is completed or the placement of tailings in the facility is initiated; and

(b) at least once every 5 years after initial construction and until completion of the tailings deposition.

(2) The panel shall:

(a) inspect the tailings storage facility after the initiation of construction;

(b) review the tailings operation, maintenance, and surveillance manual and records collected in association with the manual;

(c) interview people with responsibilities identified in the tailings operation, maintenance, and surveillance manual; and

(d) review annual engineer of record inspection reports, corrective action plans, records associated with construction, and any other aspect, plan, record, document, design, model, or report related to the tailings storage facility that the panel needs to review to ensure that the tailings storage facility is constructed, operated, and maintained as designed and is functioning, can be closed as intended, and meets acceptable engineering standards.

(3) The operator shall provide documents and records necessary for the panel to complete a periodic review.

(4) The panel shall prepare a report detailing the scope of review and include any recommendations resulting from the review.

(5) The panel shall immediately notify the department and the operator if there is an imminent threat to human health or the environment.

(6) The final review report must be signed by each panel member and provided to the department and the operator.

(7) The operator shall prepare a corrective action plan and schedule effectively implementing the recommendations included in the panel's report. The operator shall submit the corrective action plan and schedule to the panel within 60 days after receipt of the panel report.

(8) The panel shall review the corrective action plan and schedule to determine whether the corrective action plan and schedule proposed by the operator will effectively implement the recommendations included in the panel's report.

(9) Within 30 days after receipt of approval from the panel, the operator shall submit the corrective action plan with an implementation schedule to the department.

(10) Failure to implement the corrective action plan pursuant to the implementation schedule is subject to the provisions of 82-4-361 and 82-4-362.

History: En. Sec. 9, Ch. 399, L. 2015; amd. Sec. 5, Ch. 504, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 504, L. 2025. Amendment effective May 8, 2025.

82-4-381. Annual inspections. (1) The engineer of record shall inspect a tailings storage facility annually during operation or as required during closure pursuant to a reclamation plan under 82-4-336.

(2) (a) The engineer of record shall prepare a report describing the scope of the inspection and actions recommended to ensure the tailings storage facility is properly operated and maintained.

(b) The engineer of record shall submit the report to the operator and the department and immediately notify the department and the operator if the tailings impoundment presents an imminent threat or the potential for an imminent threat to human health or the environment.

(3) (a) If the report contains recommendations, the operator shall prepare a corrective action plan implementing the recommendations of the engineer of record and an implementation schedule.

(b) The operator shall submit the corrective action plan and schedule to the engineer of record.

(c) The corrective actions proposed by the operator must reasonably be expected to effectively address the recommendations contained in the inspection report. The engineer of record shall verify the proposed corrective actions.

(d) The operator shall submit the corrective action plan verified by the engineer of record and the implementation schedule to the department within 120 days following the date of the inspection.

(e) The operator shall implement the corrective action plan pursuant to the implementation schedule.

(4) The department shall conduct inspections, review records, and take other actions necessary to determine if the tailings storage facility is being operated in a manner consistent

with the approved design document and the tailings operation, maintenance, and surveillance manual.

(5) Failure to implement the corrective action plan and the implementation schedule or material deviations from the approved design document or the tailings operation, maintenance, and surveillance manual are subject to the provisions of 82-4-361 and 82-4-362.

History: **En. Sec. 10, Ch. 399, L. 2015.**

82-4-382 through 82-4-389 reserved.

82-4-390. Cyanide heap and vat leach open-pit gold and silver mining prohibited. (1) Open-pit mining for gold or silver using heap leaching or vat leaching with cyanide ore-processing reagents is prohibited except as described in subsection (2).

(2) A mine described in this section operating on November 3, 1998, may continue operating under its existing operating permit or any amended permit that is necessary for the continued operation of the mine.

History: **En. Sec. 1, I.M. No. 137, approved Nov. 3, 1998; amd. Sec. 1, Ch. 457, L. 1999.**

Part 4
Opencut Mining Reclamation

Part Cross-References

Landowner notification of surface operations, Title 82, ch. 2, part 3.

82-4-401. Short title. This part shall be known and may be cited as "The Opencut Mining Act".

History: **En. Sec. 1, Ch. 326, L. 1973; R.C.M. 1947, 50-1501.**

82-4-402. Intent, findings, and policy. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Opencut Mining Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) Because the extraction and use of opencut materials is important to the economy of this state, it is the policy of this state to provide for the reclamation and conservation of land subjected to opencut operations. Therefore, it is the purpose of this part:

(a) to preserve natural resources;

(b) to aid in the protection of wildlife and aquatic resources;

(c) to safeguard and reclaim through effective means and methods all agricultural, recreational, home, and industrial sites subjected to or that may be affected by opencut operations;

(d) to protect and perpetuate the taxable value of property through reclamation;

(e) to protect scenic, scientific, historic, or other unique areas; and

(f) to promote the health, safety, and general welfare of the people of this state.

History: **En. Sec. 2, Ch. 326, L. 1973; amd. Sec. 2, Ch. 209, L. 1974; amd. Sec. 2, Ch. 235, L. 1974; R.C.M. 1947, 50-1502; amd. Sec. 1, Ch. 280, L. 1987; amd. Sec. 8, Ch. 507, L. 1999; amd. Sec. 1, Ch. 325, L. 2001; amd. Sec. 33, Ch. 361, L. 2003; amd. Sec. 2, Ch. 385, L. 2007.**

82-4-403. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Affected land" means the area of land and land covered by water that is disturbed by opencut operations. A private road may be included as affected land only with the landowner's consent.

(2) "Amendment" means a change to the approved permit.

(3) "Board" means the board of environmental review provided for in 2-15-3502.

(4) "Department" means the department of environmental quality provided for in 2-15-3501.

(5) "Landowner" means the holder of legal title to land subjected to an opencut operation.

(6) "Materials" means bentonite, clay, scoria, peat, sand, soil, gravel, or mixtures of those substances.

(7) "Occupied dwelling unit" means a structure with permanent water and sewer facilities that is used as a home, residence, or sleeping place by at least one person who maintains a household that is lived in as a primary residence.

(8) "Opencut operation" means activities conducted for the primary purpose of sale or utilization of materials, including:

(a) mine site preparation;

(b) (i) removing the overburden and mining directly from the exposed natural deposits; or

(ii) mining directly from natural deposits of materials;

(c) processing of materials mined from the natural deposits, except that processing facilities located more than 300 feet from where materials were mined or are permitted to be mined are not part of the opencut operation;

(d) transporting, depositing, staging, and stockpiling of overburden and materials unless the activity occurs more than 300 feet from where the materials were mined or are permitted to be mined;

(e) storing or stockpiling of materials at processing facilities that are part of the opencut operation;

(f) reclamation of affected land; and

(g) parking or staging of vehicles, equipment, or supplies unless:

(i) the activity is separated from other opencut operations by at least 25 feet and is connected to the opencut operation by a single road that is no more than 25 feet wide; or

(ii) the activity is inside the construction disturbance area shown on a construction project plan.

(9) "Operator" means a person who holds a permit issued pursuant to this part. For purposes of enforcing the provisions of this part, the term also includes any person conducting opencut operations on affected land that is not covered by a permit.

(10) "Overburden" means the earth that lies above a natural deposit of materials.

(11) "Person" means:

(a) a natural person;

(b) a firm, association, partnership, cooperative, or corporation;

(c) a department, agency, or instrumentality of the state or any governmental subdivision; or

(d) any other entity.

(12) "Plan of operation" means a plan that:

(a) meets the requirements of 82-4-434; and

(b) contains a description of current land use, topographical data, hydrologic data, soils data, proposed mine areas, proposed mining and processing operations, proposed reclamation, and appropriate maps.

(13) "Processing facilities" means:

(a) crushers, screens, and pug mills;

(b) asphalt, wash, and concrete plants;

(c) treatment, sedimentation, or retention areas for processing facilities; and

(d) areas receiving washout from vehicles and equipment using the processing facilities.

(14) "Reclamation" means the reconditioning of affected land to make the area suitable for productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, or residential or industrial development.

(15) "Soil" means the dark or root-bearing surface matter that has been generated through time by the interaction of biological activity, climate, topography, and parent material and that is capable of sustaining plant growth and is recognized and identified as such by standard authorities and methods.

(16) "Water conveyance facilities" means existing diversions, aqueducts, canals, ditches, drains, flumes, headgates, syphons, or other structures or infrastructure actively used to facilitate the beneficial use of a water right under Title 85.

History: En. Sec. 4, Ch. 326, L. 1973; amd. Sec. 4, Ch. 209, L. 1974; amd. Sec. 4, Ch. 235, L. 1974; amd. Sec. 17, Ch. 39, L. 1977; R.C.M. 1947, 50-1504; amd. Sec. 2, Ch. 280, L. 1987; amd. Sec. 402, Ch. 418, L. 1995; amd. Sec. 9, Ch. 507, L. 1999; amd. Sec. 3, Ch. 385, L. 2007; amd. Sec. 2, Ch. 198, L. 2013; amd. Sec. 2, Ch. 545, L. 2021.

82-4-404. Exemption — operations covered by metal mine reclamation. Nothing in this part may be construed to be applicable to mining or exploration operations which are regulated under the provisions of part 3 of this chapter.

History: En. Sec. 18, Ch. 326, L. 1973; amd. Sec. 29, Ch. 39, L. 1977; R.C.M. 1947, 50-1516.

Cross-References

Landowner notification of surface operations, Title 82, ch. 2, part 3.

82-4-405. Inapplicability to government. The provisions of this part relating to fees or bonds do not apply to the federal government or its agencies, the state of Montana, counties, cities, or towns.

History: En. 50-1516.1 by Sec. 1, Ch. 81, L. 1975; amd. Sec. 30, Ch. 39, L. 1977; R.C.M. 1947, 50-1516.1; amd. Sec. 10, Ch. 507, L. 1999; amd. Sec. 5, Ch. 477, L. 2009; amd. Sec. 3, Ch. 334, L. 2019; amd. Sec. 2, Ch. 428, L. 2021.

82-4-406. Exemption — opencut operations on federal and state lands. This part is not applicable to operations on certain federal and state lands as specified by the department, provided it is first determined by the department that laws, regulations, or rules administered or issued by the federal or state agency administering or having jurisdiction over the affected land impose controls for opencut operations on those lands equal to or greater than those imposed by this part.

History: En. 50-1517 by Sec. 1, Ch. 219, L. 1975; amd. Sec. 31, Ch. 39, L. 1977; R.C.M. 1947, 50-1517; amd. Sec. 4, Ch. 385, L. 2007; amd. Sec. 105, Ch. 324, L. 2021.

Cross-References

Sovereignty and jurisdiction of state, 2-1-102.
Jurisdiction over federal enclaves, 2-1-201.

82-4-407 through 82-4-420 reserved.

82-4-421. Repealed. Sec. 18, Ch. 385, L. 2007.

History: En. Sec. 5, Ch. 326, L. 1973; amd. Sec. 18, Ch. 39, L. 1977; R.C.M. 1947, 50-1505; amd. Sec. 403, Ch. 418, L. 1995.

82-4-422. Powers, duties, and functions. (1) The department has the powers, duties, and functions to:

(a) issue permits when, on the basis of the information set forth in the application and an evaluation of the proposed opencut operations, the department finds that the requirements of this part and rules adopted to implement this part will be observed;

(b) amend permits in accordance with the provisions of 82-4-436;

(c) reclaim any affected land with respect to which a bond has been forfeited;

(d) make investigations or inspections that are considered necessary to ensure compliance with any provision of this part; and

(e) enforce and administer the provisions of this part and issue orders necessary to implement the provisions of this part.

(2) The department shall:

(a) adopt rules that pertain to opencut operations in order to accomplish the purposes of this part;

(b) adopt rules:

(i) establishing uniform procedures for filing of necessary records;

(ii) providing procedures for the issuance of permits and filing of annual reports; and

(iii) providing other administrative requirements necessary to implement this part.

(3) The board shall conduct hearings and, for the purposes of conducting those hearings, administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the production of any books, papers, correspondence, memoranda, agreements, documents, or other records relevant or material to the inquiry.

History: En. Sec. 6, Ch. 326, L. 1973; amd. Sec. 19, Ch. 39, L. 1977; R.C.M. 1947, 50-1506; amd. Sec. 404, Ch. 418, L. 1995; amd. Sec. 11, Ch. 507, L. 1999; amd. Sec. 15, Ch. 79, L. 2001; amd. Sec. 2, Ch. 325, L. 2001; amd. Sec. 5, Ch. 385, L. 2007; amd. Sec. 106, Ch. 324, L. 2021.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Contested cases, Title 2, ch. 4, part 6.
Public contracts generally, Title 18, ch. 1.

82-4-423. Repealed. Sec. 18, Ch. 385, L. 2007.

History: En. Sec. 3, Ch. 326, L. 1973; amd. Sec. 3, Ch. 209, L. 1974; amd. Sec. 3, Ch. 235, L. 1974; amd. Sec. 16, Ch. 39, L. 1977; R.C.M. 1947, 50-1503; amd. Sec. 3, Ch. 280, L. 1987; amd. Sec. 405, Ch. 418, L. 1995; amd. Sec. 12, Ch. 507, L. 1999.

82-4-424. Receipt and expenditure of funds — disposition of penalties and other money. (1) The department may receive any federal funds, state funds, or any other funds for the reclamation of affected land. The department may cause the reclamation work to be done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons.

(2) All penalties and other money paid under the provisions of this part, except fees provided for in 82-4-437, must be deposited in the environmental rehabilitation and response account in the state special revenue fund provided for in 75-1-110. Funds held by the department as bond or as a result of bond forfeiture that are no longer needed for reclamation and for which the department is not able to locate a surety or other person who owns the funds after diligent search must be deposited in the environmental rehabilitation and response account in the state special revenue fund.

History: En. Sec. 11, Ch. 326, L. 1973; amd. Sec. 24, Ch. 39, L. 1977; R.C.M. 1947, 50-1511; amd. Sec. 1, Ch. 431, L. 1991; amd. Sec. 406, Ch. 418, L. 1995; amd. Sec. 5, Ch. 338, L. 2001; amd. Sec. 6, Ch. 385, L. 2007; amd. Sec. 6, Ch. 477, L. 2009; amd. Sec. 4, Ch. 334, L. 2019.

Cross-References

Powers of soil conservation district, 76-15-403.

82-4-425. Inspection of opencut operations. The department or its representatives may enter upon lands subjected to opencut operations at all reasonable times for the purpose of inspection to determine whether the provisions of this part have been complied with. The department shall attempt to provide reasonable notice to a permitted operator when practicable under the circumstances.

History: En. Sec. 12, Ch. 326, L. 1973; amd. Sec. 25, Ch. 39, L. 1977; R.C.M. 1947, 50-1512; amd. Sec. 407, Ch. 418, L. 1995; amd. Sec. 7, Ch. 385, L. 2007; amd. Sec. 3, Ch. 198, L. 2013; amd. Sec. 5, Ch. 334, L. 2019.

82-4-426. Reclamation of land on which bond forfeited. In keeping with the provisions of this part, the department or its agents or contractors may enter and reclaim any affected land with respect to which a bond has been forfeited.

History: En. Sec. 14, Ch. 326, L. 1973; amd. Sec. 27, Ch. 39, L. 1977; R.C.M. 1947, 50-1514; amd. Sec. 408, Ch. 418, L. 1995; amd. Sec. 72, Ch. 509, L. 1995; amd. Sec. 6, Ch. 338, L. 2001; amd. Sec. 8, Ch. 385, L. 2007; amd. Sec. 6, Ch. 334, L. 2019.

82-4-427. Hearing — appeal — venue. (1) (a) Subject to subsections (1)(b) and (1)(c), a person whose interests are or may be adversely affected by a final decision of the department to approve or disapprove a permit application and accompanying material or a permit amendment application and accompanying material under this part is entitled to a hearing before the board if a written request stating the reasons for the appeal is submitted to the board within 30 days of the department's decision.

(b) If an application was noticed publicly as required by this part, to be eligible to file for an appeal a person must have either submitted comments to the department on an application or submitted comments at a public meeting held under 82-4-432.

(c) Subsection (1)(b) does not apply to a person filing for an appeal of an application that was not required to be noticed publicly by this part.

(2) An operator may request a hearing before the board on:

(a) a final decision of the department director pursuant to 82-4-436(4) by submitting a request for a hearing within 15 days of receipt of notice of the director's decision; and

(b) an order of suspension or revocation issued under 82-4-442 by filing a request for hearing within 30 days of receipt of the decision.

(3) The operator or the landowner may request a hearing before the board on a decision on a bond release application by submitting a written request stating the reasons for the appeal within 30 days of the receipt of the decision.

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

(5) A petition for judicial review of a board decision made pursuant to this section must be brought in the county in which the permitted activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the activity is proposed to occur.

(6) The petition for judicial review must include the party to whom the permit was issued or the applicant unless otherwise agreed to by the permitholder or applicant. All judicial challenges of permits for projects with a project cost, as determined by the court, of more than $1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

History: En. Sec. 15, Ch. 326, L. 1973; amd. Sec. 28, Ch. 39, L. 1977; R.C.M. 1947, 50-1515; amd. Sec. 409, Ch. 418, L. 1995; amd. Sec. 13, Ch. 507, L. 1999; amd. Sec. 16, Ch. 79, L. 2001; amd. Sec. 34, Ch. 361, L. 2003; amd. Sec. 17, Ch. 337, L. 2005; amd. Sec. 9, Ch. 385, L. 2007; amd. Sec. 4, Ch. 198, L. 2013; amd. Sec. 7, Ch. 334, L. 2019; amd. Sec. 50, Ch. 535, L. 2021.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

82-4-428 through 82-4-430 reserved.

82-4-431. Permit for mining, processing, and reclamation required. (1) Except as provided in subsections (2) and (3), a permit is required for an operator who:

(a) conducts an opencut operation that results in the removal of more than 10,000 cubic yards of materials and overburden; or

(b) conducts an opencut operation where less than 10,000 cubic yards of materials and overburden are removed from the site and:

(i) the open cut operation affects surface water, including intermittent or perennial streams, ground water, or water conveyance facilities; or

(ii) has never held a permit pursuant to this part.

(2) (a) An operator who holds a permit under this part may conduct a limited opencut operation without first securing an additional permit or an amendment to an existing permit if the limited opencut operation meets the following criteria:

(i) the area to be disturbed by the limited opencut operation is located more than one-half mile from the operator's nearest existing limited opencut operation;

(ii) the total amount of materials and overburden removed does not exceed 10,000 cubic yards and the total area from which the materials and overburden are removed does not exceed 5 acres;

(iii) the operator:

(A) submits appropriate site and opencut operation information on a limited opencut operation form provided by the department;

(B) within 1 year of the department's receipt of the limited opencut operation form, salvages all soil from the area to be disturbed, removes the materials, grades the affected land to 3:1 or flatter slopes, blends the graded land into the surrounding topography, replaces an appropriate amount of overburden and all soil, and reclaims to conditions present prior to mining all access roads used for the operation unless the landowner requests in writing that specific roads or portions of the roads remain open. Roads left open at the landowner's request must be sized to support the use of the road after opencut operations.

(C) at the first seasonal opportunity, seeds or plants all affected land with vegetative species that meet the requirements of 82-4-434; and

(iv) the limited opencut operation is not:

(A) in intermittent or perennial streams;

(B) in an area where the opencut operation will affect surface water, ground water, a water conveyance facility, or any slope that is steeper than 3:1;

(C) in an area where mining would be restricted by other laws; or

(D) in violation of local zoning regulations adopted under Title 76, chapter 2.

(b) At the operator's request and with department approval, the operator may have up to 1 additional year to perform the reclamation required by subsection (2)(a)(iii), provided the operator does not apply to extend or continue the limited opencut operation pursuant to subsection (2)(c).

(c) (i) An operator who commences a limited opencut operation pursuant to subsection (2)(a) may apply for a permit to continue or expand that opencut operation pursuant to the provisions of this subsection (2)(c).

(ii) The permit application must be complete within 180 days of the department's receipt of the limited opencut operation form.

(iii) If the complete permit application is acceptable within 1 year of the department's receipt of the limited opencut operation form, the provisions of subsections (2)(a)(iii)(B) and (2)(a)(iii)(C) do not apply and reclamation must be conducted as prescribed in the permit.

(iv) If the complete permit application is not acceptable within 1 year of the department's receipt of the limited opencut operation form, the application is considered abandoned and void. Starting 3 days after the department notifies the applicant that the application is considered abandoned and void, the applicant has 180 days to complete the reclamation provided for in subsections (2)(a)(iii)(B) and (2)(a)(iii)(C).

(v) If the permit application is withdrawn by the applicant within 1 year of the department's receipt of the limited opencut operation form, the reclamation provided for in subsections (2)(a)(iii)(B) and (2)(a)(iii)(C) must be completed within 180 days of the date of the withdrawal.

(3) A landowner may remove up to 10,000 cubic yards of opencut materials on the landowner's property for personal or agricultural uses without obtaining a permit, unless the removal affects surface water, including intermittent or perennial streams, ground water, or water conveyance facilities.

(4) The department may deny an application for issuance of a permit under subsection (1) or may prohibit the operator from conducting a limited opencut operation under subsection (2)(a) if, at the time of application or notification, the operator has a pattern of violations or is in current violation of this part, rules adopted under this part, or provisions of a permit.

(5) A permit is effective when the department provides written notice to the applicant that the information and materials provided to the department meet the requirements of this part and rules adopted pursuant to this part.

(6) (a) Except as provided in subsection (6)(b), a permit issued under this part expires on the reclamation date proposed by the operator and approved by the department.

(b) Prior to the expiration of a permit:

(i) the operator may file an application to amend the plan of operation to extend the reclamation date pursuant to 82-4-434(4)(a);

(ii) the department may amend the plan of operation pursuant to 82-4-436;

(iii) the department may revoke the permit pursuant to 82-4-442;

(iv) the operator and the department may agree to terminate the permit upon mutual written consent;

(v) (A) for a site permitted or for which an amendment was approved in 2010 or later, the operator may apply to extend the reclamation date on a site by submitting a form furnished by the department and provide an updated landowner consultation form and bond, if applicable; or

(B) for a site permitted or for which an amendment was approved prior to 2010, the department may use its discretion to allow the operator to request an extended reclamation date pursuant to subsection (6)(b)(v)(A); or

(vi) the operator may change the postmine land use on a site by submitting the request on a form furnished by the department and provide an updated landowner consultation form and bond, if applicable.

(7) The expiration or termination of a permit issued under this part does not relieve an operator from the obligation to conduct reclamation as required by the plan of operation or the liability for costs of reclamation exceeding the amount of the bond.

History: En. Sec. 7, Ch. 326, L. 1973; amd. Sec. 20, Ch. 39, L. 1977; R.C.M. 1947, 50-1507; amd. Sec. 4, Ch. 280, L. 1987; amd. Sec. 3, Ch. 408, L. 1991; amd. Sec. 2, Ch. 431, L. 1991; amd. Sec. 410, Ch. 418, L. 1995; amd. Sec. 14, Ch. 507, L. 1999; amd. Sec. 10, Ch. 385, L. 2007; amd. Sec. 5, Ch. 198, L. 2013; amd. Sec. 8, Ch. 334, L. 2019; amd. Sec. 3, Ch. 545, L. 2021.

Cross-References

Public contracts generally, Title 18, ch. 1.

82-4-432. Application for permit — contents — issuance — amendment. (1) (a) An operator who requires a permit pursuant to 82-4-431 shall apply for a permit on forms furnished by the department prior to commencing operations.

(b) Operations subject to subsections (2) through (13) are those:

(i) that affect ground water or surface water, including intermittent or perennial streams, or water conveyance facilities; or

(ii) where 10 or more occupied dwelling units are within one-half mile of the permit boundary of the operation.

(c) All other operations are subject to subsection (14).

(2) (a) An application for a permit pursuant to subsections (2) through (13) must be made using forms furnished by the department and must contain the following:

(i) the name of the applicant and, if other than the owner of the land, the name and address of the owner;

(ii) the type of operation to be conducted;

(iii) the estimated volume of overburden and materials to be removed;

(iv) the location of the proposed opencut operation by legal description and county accompanied by a map showing the location of the proposed operation sufficient to allow the public to locate the proposed site; and

(v) a statement that the applicant has the legal right to mine the designated materials in the lands described.

(b) The application must be accompanied by:

(i) a bond or security meeting the requirements as set out in this part;

(ii) a statement from the local governing body having jurisdiction over the area to be mined certifying that the proposed sand and gravel opencut operation complies with applicable local zoning regulations adopted under Title 76, chapter 2, and in effect prior to the filing of a permit application or at the time a written request is received for a preapplication meeting pursuant to this section;

(iii) a plan of operation that contains information sufficient to initiate acceptability review by addressing the requirements of 82-4-434 and rules adopted pursuant to this part related to 82-4-434;

(iv) written documentation that the landowner has been consulted about the proposed plan of operation;

(v) a written agreement between the landowner and the operator authorizing the operator access to the site to perform reclamation if the landowner revokes or otherwise terminates the operator's right to mine;

(vi) a list that is certified by the operator and generated on a form furnished by the department using cadastral and field information at the time of permit application of owners of real property on which occupied dwelling units exist located within one-half mile of the proposed permit boundary using the owners of record as shown no more than 60 days prior to the submission of an application in the paper or electronic records of the county clerk and recorder for the county where the proposed opencut operation is located; and

(vii) documentation of consultation with the state historic preservation office regarding possible archaeological or historical values on the affected land.

(3) If, prior to applying for a permit, a person notifies the department of the intention to submit an application and requests that the department examine the area to be mined, the department shall examine the area and make recommendations to the person regarding the proposed opencut operation. The person may request a preapplication meeting with the department. The department shall hold a meeting if requested.

(4) (a) (i) Except as provided in 75-1-208(4)(b), upon receipt of an application, the department shall, within 5 working days, review the application and notify the person as to whether or not the application is complete. An application is complete if it contains the items listed in subsections (1) and (2). If the department determines that the application is not complete, the department shall notify the applicant in writing and include a detailed identification of information necessary to make the application complete.

(ii) The time limit provided in subsection (4)(a)(i) applies to each submittal of the application until the department determines that the application is complete.

(b) (i) A determination that an application is complete does not ensure that the application is acceptable and does not limit the department's ability to request additional information or inspect the site during the review process.

(ii) Upon determining that an application is complete, the department shall begin reviewing the application for acceptability pursuant to this section.

(iii) The department shall accept public comment throughout the review process.

(c) The department may declare an application abandoned and void if:

(i) the applicant fails to respond to the department's written request for more information within 1 year; and

(ii) the department notifies the applicant of its intent to abandon the application and the applicant fails to provide information within 30 days.

(d) The department shall notify the applicant when an application is complete and post the complete application on the department's website.

(5) Within 15 days after the department sends notice of a complete application to the applicant, the applicant shall provide public notice, which must include:

(a) the name, address, and telephone number of the applicant;

(b) a description of the acreage, the estimated volume of overburden and materials to be removed, the type of materials to be removed, the facilities, the duration of activities, and the access points of the proposed opencut operation;

(c) a legal description of the proposed opencut operation and a map, or directions on how to access a map, showing the location of the proposed opencut operation and immediately surrounding property; and

(d) on a form provided by the department, notification that the application is complete and information on how to request a public meeting pursuant to this section.

(6) To provide public notice, the applicant shall:

(a) publish notice at least twice in a newspaper of general circulation in the locality of the proposed opencut operation. A map is not required in the notice if, in addition to the legal description of the proposed opencut operation, the notice provides an address for the map posted on the department's website and instructions for obtaining a paper copy of the map from an applicant. If the notice does not include a map, the applicant shall promptly provide a paper copy to a requestor.

(b) mail the notice by first-class mail to the board of county commissioners of the county in which the proposed opencut operation is located and to surface owners of land located within one-half mile of the boundary of the proposed opencut permit area using the most current known owners of record as shown in the paper or electronic records of the county clerk and recorder for the county where the proposed opencut operation is located;

(c) post the notice in at least two prominent locations at the site of the proposed opencut operation, including near a public road if possible; and

(d) provide the department with the names and addresses of those notified pursuant to subsection (6)(b).

(7) (a) Except as provided in subsection (7)(b), the department shall accept requests for a public meeting for 45 days after the department sends notice to the applicant of a complete application. Within this period, unless a public meeting is required pursuant to subsection (9), the department shall notify the applicant as to whether or not the application is acceptable pursuant to subsection (10).

(b) If the applicant and the department mutually agree or the applicant submits documentation on a form provided by the department showing that a public meeting will not be required pursuant to subsection (9), the department shall inform the applicant within 30 days of the notice of a complete application as to whether or not the application is acceptable pursuant to subsection (10).

(8) If a public meeting is required pursuant to subsection (9), within 30 days from the closing date of the public meeting request period in subsection (7), the department shall:

(a) hold a meeting; and

(b) notify the applicant as to whether or not the application is acceptable pursuant to subsection (10) or that the application requires an extended review pursuant to 82-4-439.

(9) (a) The department shall hold a public meeting in the area of the proposed opencut operation at the request of:

(i) the applicant; or

(ii) at least 51% of the real property owners on which occupied dwelling units exist or 10 real property owners on which occupied dwelling units exist, whichever is greater, notified pursuant to this section. For the purposes of this subsection (9)(a)(ii), multiple owners of the same occupied dwelling unit are to be counted as a single real property owner.

(b) To provide notice for a public meeting, the department shall notify by first-class mail or electronically the property owners on the list provided by the applicant pursuant to this section and the board of county commissioners in the county where the proposed opencut operation is located.

(10) (a) An application is acceptable if it complies with the requirements of subsections (1) and (2) and includes a plan of operation that satisfies the requirements of 82-4-434 and rules adopted pursuant to this part related to 82-4-434. If the department determines that the application is not acceptable, the department shall notify the applicant in writing and include a detailed identification of all deficiencies.

(b) Within 10 working days of receipt of the applicant's response to the identified deficiencies, the department shall review the responses and notify the applicant as to whether or not the application is acceptable. If the application is unacceptable, the department shall notify the applicant in writing and include a detailed identification of the deficiencies.

(c) If the application is acceptable, the department shall issue a permit to the operator that entitles the operator to engage in the opencut operation on the land described in the application.

(11) (a) An operator may amend a permit by submitting an amendment application to the department. Upon receipt of the amendment application, the department shall review it in accordance with the requirements and procedures in this section. If the amendment application is acceptable, the department shall issue an amendment to the original permit.

(b) An application for an amendment is not subject to the public notice or public meeting requirements of this section or an extended review pursuant to 82-4-439 unless it proposes an increase in permitted acreage of 50% or more of the amount of permitted acreage in the current permit.

(c) For amendment applications not subject to the public notice and public meeting requirements of this section, the department shall, within 45 days of notifying the applicant that the application is complete, notify the applicant as to whether or not the application is acceptable pursuant to subsection (10).

(12) (a) Except as provided in subsection (12)(b), if weather or other field conditions prevent the department from conducting an adequate site inspection to evaluate a permit or amendment application, the time limits provided in subsections (7) and (11) are suspended until the weather or other field conditions allow for an adequate site inspection.

(b) Before suspending time limits, the department shall allow the operator to provide the information needed from a site inspection by other means, including but not limited to surveys, photos, videos, or other reports.

(13) The department shall post a copy of an acceptable permit or amendment on its website.

(14) (a) Operations not described by subsection (1)(b) that apply for a permit or an amendment shall submit:

(i) a landowner consultation form;

(ii) documentation of consultation with the state historic preservation office regarding possible archaeological or historical values on the affected land;

(iii) a reclamation bond calculated pursuant to the requirements of 82-4-433 unless exempt pursuant to 82-4-405;

(iv) if applicable, documentation of compliance with Title 87, chapter 5, part 9;

(v) a statement from the local governing body having jurisdiction over the area to be mined certifying that the proposed sand and gravel opencut operation complies with applicable local zoning regulations adopted under Title 76, chapter 2, and in effect prior to the filing of a permit application or at the time a written request is received for a preapplication meeting pursuant to this section;

(vi) results from three soil test pits meeting the soil guideline requirements;

(vii) the appropriate fee as set forth in 82-4-437 and a $500 fee to be deposited in the opencut fund pursuant to 82-4-438;

(viii) the proposed permit boundary in a format acceptable to the department and a location map;

(ix) a certification from the operator that there are fewer than 10 occupied dwelling units within one-half mile of the permit boundary of the operation no more than 60 days from the date the application materials are submitted;

(x) certification from the operator that notice of the proposed opencut operation was:

(A) published at least twice in a newspaper of general circulation in the locality of the proposed opencut operation;

(B) mailed to surface owners of land located within one-half mile of the boundary of the proposed opencut permit area using the most current known owners of record as shown in the paper or electronic records of the county clerk and recorder for the county where the proposed opencut operation is located. If the notice does not include a map, the applicant shall promptly provide a copy to a requestor.

(C) posted in at least two prominent locations at the site of the proposed opencut operation, including near a public road if possible;

(xi) the date the site is to be fully reclaimed.

(b) Except as provided in 75-1-208(4)(b), upon receipt of an application under this subsection (14), the department shall, within 5 working days, review the application and notify the person as to whether or not the application is complete. An application is complete if it contains the items listed in subsection (14)(a). If the department determines that the application is not complete, the department shall notify the applicant in writing and include a detailed identification of information necessary to make the application complete.

(c) Upon determining that an application is complete, the department shall begin reviewing the application for acceptability pursuant to this section. Public comment may be submitted throughout the review period.

(d) Within 15 days of receiving the information required by subsection (14)(a), the department shall determine if the information meets the requirements of subsection (14)(a) and notify the operator in writing. If the requirements are met, the operator may commence the operation on receipt of the notification.

(e) If the information submitted does not meet the requirements of subsection (14)(a), the department shall notify the applicant in writing and include a detailed identification of all deficiencies.

(f) Within 10 working days of receipt of the applicant's response to the identified deficiencies, the department shall review the responses and notify the applicant as to whether the information submitted meets the requirements of subsection (14)(a). If the information submitted does not meet the requirements, the department shall notify the applicant in writing and include a detailed identification of the deficiencies.

(g) If the information submitted to the department meets the requirements of subsection (14)(a), the department shall notify the operator in writing. On receipt of the notification, the operator may commence opencut operations on the land described in the application.

(h) The department may prohibit an operation under this section if, at the time of submission of information required by subsection (14)(a), the operator has a pattern of violations of this part or is in current violation of this part, rules adopted under this part, or provisions of a permit.

(i) Prior to removing materials, the operator shall salvage all of the soil from the area to be disturbed.

(j) Prior to the final reclamation date, the operator shall grade the affected land to 3:1 or flatter slopes for rangeland and to 5:1 or flatter slopes for farmland and cropland, blend the graded land into the surrounding topography, replace an appropriate amount of overburden and all soils, and reclaim to conditions either present prior to operations or as specified by the landowner, including all access roads used for the operation unless the landowner requests in writing that specific roads or portions of roads remain in place. Roads left at the landowner's request must be sized to support the use of the road after operations.

History: **En. Sec. 8, Ch. 326, L. 1973; amd. Sec. 21, Ch. 39, L. 1977; R.C.M. 1947, 50-1508; amd. Sec. 4, Ch. 408, L. 1991; amd. Sec. 411, Ch. 418, L. 1995; amd. Sec. 15, Ch. 507, L. 1999; amd. Sec. 13, Ch. 299, L. 2001; amd. Sec. 3, Ch. 325, L. 2001; amd. Sec. 11, Ch. 385, L. 2007; amd. Sec. 7, Ch. 477, L. 2009; amd. Sec. 6, Ch. 198, L. 2013; amd. Sec. 9, Ch. 334, L. 2019; amd. Sec. 4, Ch. 545, L. 2021.**

82-4-433. Bond. (1) Before a permit or permit amendment may be issued, a surety bond made payable to the state of Montana and conditioned upon the operator's full compliance with all requirements of this part, the rules adopted under this part, and the permit must be submitted to and approved by the department. The bond must be signed by the applicant as principal and by a good and sufficient corporate surety licensed to do business in the state of Montana. The bond amount must be determined by the department at the cost of reclamation of the affected land by the department. The applicant shall submit a bond that is no less than the amount determined by the department.

(2) (a) For opencut operations on federal land within the state, the department may accept a bond payable to the state of Montana and the federal agency administering the land. The bond must provide at least the same amount of financial guarantee as required by this part.

(b) The bond must provide that the department may forfeit the bond without the concurrence of the federal land management agency. The bond may provide that the federal land management agency may forfeit the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be payable to the department and may also be payable to the federal land management agency. If the bond is payable to the department and the federal land management agency, the department, before accepting the bond, shall enter into an agreement or memorandum of understanding with the federal land management agency providing for administration of the bond funds in a manner that will allow the department to provide for compliance with the requirements of this part, the rules adopted under this part, and the permit.

(3) In lieu of submitting a surety bond pursuant to subsection (1), the operator may submit cash, a certificate of deposit, a letter of credit in a form acceptable to the department, or a bond with property sureties in an amount equal to that of the required bond on conditions as prescribed in this part. In the discretion of the department, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities located on the land as security, in which event a surety may not be required but the department may require that the amount of the bond be adjusted to reimburse the department for foreclosure costs.

(4) The bond or other security must be increased or reduced as provided in this part.

(5) The bond or security remains in effect until the affected land has been reclaimed as provided under the permit and the department has approved the reclamation and released the bond or security. The bond or security may cover only actual affected land and must be increased or reduced to cover only unreclaimed acreages.

(6) If the license of a surety that has issued a bond filed with the department pursuant to this part is suspended or revoked, the operator, within 30 days after receiving notice of the suspension or revocation from the department, shall substitute a good and sufficient bond from another surety licensed to do business in the state or shall submit another type of security pursuant to subsection (3). Upon failure of the operator to make the bond substitution within the 30-day time period, the department shall suspend the permit of the operator to conduct opencut operations upon the land described in the permit until the substitution has been made. If the operator demonstrates in writing that the operator has been pursuing a replacement bond in good faith but additional time is necessary to complete the transaction, the department may grant up to an additional 60 days for the operator to submit a replacement bond before suspending the permit.

(7) Whenever an operator has completed all of the reclamation requirements under the provisions of this part as to any affected land, the operator shall notify the department of the completed requirements and may request bond release. If the department releases the operator from further obligation regarding any affected land, the bond must be reduced proportionately. Within 365 days of receiving the bond release request, the department shall notify the operator and the landowner in writing of the decision on the bond release application.

(8) If the operator fails to complete reclamation as required, the bond is forfeited. The surety is liable to the state for the bond amount. The operator is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(9) (a) If the bond is canceled by the surety, the operator shall provide a replacement bond to the department within 30 days after receiving notice of the cancellation. The department may extend this timeframe if the operator exercised due diligence in attempting to obtain a replacement bond within the time required.

(b) The permit is suspended by operation of law if the operator fails to submit a replacement bond within 30 days or within an extended period provided by the department pursuant to subsection (9)(a).

(c) A suspended permit is reinstated upon department approval of a replacement bond.

History: **En. Sec. 9, Ch. 326, L. 1973; amd. Sec. 22, Ch. 39, L. 1977; R.C.M. 1947, 50-1509; amd. Sec. 1, Ch. 138, L. 1983; amd. Sec. 5, Ch. 280, L. 1987; amd. Sec. 3, Ch. 431, L. 1991; amd. Sec. 412, Ch. 418, L. 1995; amd. Sec. 16, Ch. 507, L. 1999; amd. Sec. 2, Ch. 32, L. 2005; amd. Sec. 12, Ch. 385, L. 2007; amd. Sec. 7, Ch. 198, L. 2013; amd. Sec. 10, Ch. 334, L. 2019.**

Cross-References

Surety bonds and companies, Title 28, ch. 11, part 4; Title 33, ch. 26, part 1.

82-4-434. Plan of operation — requirements. (1) The department shall accept a plan of operation if the department finds that the plan complies with the requirements of this part and the rules adopted pursuant to this part and that after the opencut operation is completed, the affected land will be reclaimed to a productive use. Once the plan of operation is accepted by the department, it becomes a part of the permit but is subject to annual review and amendment by the department. Any amendment by the department must comply with the provisions of 82-4-436(2).

(2) A plan of operation must provide:

(a) that the affected land will be reclaimed for one or more specified uses, including but not limited to agriculture, forest, pasture, orchard, cropland, residence, recreation, industry, habitat for wildlife, including food, cover, or water, or other reasonable, practical, and achievable uses;

(b) that soil and other suitable overburden will be salvaged and replaced on affected land, when required by the postmining land use, after completion or termination of that particular phase of the opencut operation. The depth of soil and other suitable overburden to be placed on the reclaimed area must be specified in the plan.

(c) that grading will result in a postmining topography conducive to the designated postmining land use;

(d) that waste will be buried on site in a manner that protects water quality and is compatible with the postmining land use or will be disposed of off site in accordance with state laws and rules;

(e) that all access, haul, and other support roads will be located, constructed, and maintained in a manner that controls and minimizes erosion;

(f) that archaeological and historical values on affected lands will be given legally required protection;

(g) that except for those postmining land uses that do not require vegetation, each surface area of the mined premises that will be disturbed will be revegetated when its use for the opencut operation is no longer required;

(h) that seeding and planting will be done in a manner to achieve a permanent vegetative cover that is suitable for the postmining land use and that retards erosion;

(i) that reclamation will be as concurrent with the opencut operation as feasible and will be completed within a specified length of time;

(j) a declaration by the operator that the operator will comply with applicable federal, state, county, or local regulations, ordinances, and permits, licenses, and approvals for the operation;

(k) for the construction of berms between the opencut operation and residences located within 300 feet of the permit boundary; and

(l) procedures to prevent physical harm to water conveyance facilities or that allow the owner of a water conveyance facility to authorize in writing the relocation or disturbance of the water conveyance facility.

(3) If reclamation according to the plan of operation is not completed in the time specified, the department may:

(a) pursue an administrative order pursuant to 82-4-441;

(b) after 30 days' written notice, order the operator to cease mining and, if the operator does not cease, issue an order to reclaim, a notice of violation, or an order of abatement;

(c) institute an action to enjoin further operation; or

(d) on request of the operator:

(i) extend the timeframe for reclamation-only activities, including revegetation, up to 5 years by submitting the request on a form furnished by the department and provide an updated landowner consultation form and bond, as appropriate; or

(ii) change the postmine land use by submitting the request on a form furnished by the department and provide an updated landowner consultation form and bond, as appropriate.

(4) (a) At any time during the term of the permit, the operator may for good reason submit to the department a new plan of operation or amendments to the existing plan, including extensions of time for reclamation.

(b) The department may approve the proposed new plan of operation or amendments to the existing plan if:

(i) the new plan of operation or amendments comply with the requirements of this section; and

(ii) (A) the operator has in good faith conducted opencut operations according to the existing plan of operation; or

(B) it is highly improbable that reclamation will be successful unless the existing plan of operation is replaced or amended.

(5) The permit, plan of operation, and amendments accepted by the department are a public record and are open to inspection.

History: En. Sec. 10, Ch. 326, L. 1973; amd. Sec. 23, Ch. 39, L. 1977; R.C.M. 1947, 50-1510; amd. Sec. 6, Ch. 280, L. 1987; amd. Sec. 58, Ch. 16, L. 1991; amd. Sec. 413, Ch. 418, L. 1995; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 17, Ch. 507, L. 1999; amd. Sec. 4, Ch. 325, L. 2001; amd. Sec. 13, Ch. 385, L. 2007; amd. Sec. 11, Ch. 334, L. 2019; amd. Sec. 5, Ch. 545, L. 2021.

Cross-References

Breach of contract, 27-1-311.
Injunctions, Title 27, ch. 19.
Water quality control, Title 75, ch. 5.
Appropriation permit required for reservoir, 85-2-305.

82-4-435. Repealed. Sec. 2, Ch. 113, L. 1981.

History: En. Sec. 13, Ch. 326, L. 1973; amd. Sec. 26, Ch. 39, L. 1977; R.C.M. 1947, 50-1513.

82-4-436. Plan amendments by department. (1) Unless an amendment to a plan of operation or permit is proposed by the operator, the department may amend only the terms of a plan or permit in compliance with this section.

(2) If the department believes, based on credible evidence, that a continued opencut operation under the terms of an existing plan of operation or permit would violate a substantive numerical or narrative state standard or regulation or otherwise violate a purpose of this part, it may propose to the operator an amendment to the plan or permit.

(3) The department shall notify the operator of the proposed amendment in writing. The notice must include:

(a) an identification of the existing plan or permit;

(b) the justification for the amendment, including all test results or other credible evidence that the department relied on in proposing the amendment; and

(c) the text, maps, drawings, and other appropriate information that constitute the proposed amendment.

(4) The operator may, within 15 days of receipt of the department's amendment notice, request a review of the amendment by the department director. The amendment is not effective or enforceable until 15 days following the issuance of the department's amendment notice or, if a review by the director is requested, until 15 days after the director affirms or modifies the amendment. A decision by the department director is subject to the contested case provisions in 82-4-427.

(5) If the operator requests a hearing on the proposed amendment, the amendment is not effective and enforceable until completion of the contested case process.

History: En. Sec. 5, Ch. 325, L. 2001; amd. Sec. 35, Ch. 361, L. 2003; amd. Sec. 18, Ch. 337, L. 2005; amd. Sec. 14, Ch. 385, L. 2007.

82-4-437. Annual report — fees. (1) For each opencut operation, the operator shall file an annual report on a form furnished by the department. The report must contain the information and be submitted at times provided in rules of the department.

(2) (a) Except as provided in subsection (2)(b), each opencut operation shall submit with the annual report a fee of 4.5 cents per cubic yard of materials for all operations mined during the period covered by the report.

(b) Opencut operations that mine, extract, or produce bentonite are not subject to the fee in subsection (2)(a).

(3) The department:

(a) shall require the operator to pay the following fees:

(i) $1,500 for each permit application submitted pursuant to 82-4-432(1); and

(ii) for each amendment application submitted pursuant to 82-4-432(11):

(A) $750 if the date of the amendment application is 10 years or less from the date of the permit approval; or

(B) $1,500 if the date of the amendment application is more than 10 years from the date of the permit approval; and

(b) shall adopt rules for applications or responses that are administrative. Fees, if any, for administrative actions identified under this subsection (3) may not exceed $250.

(4) Pursuant to the provisions of 82-4-441, a person who mines materials without a permit in violation of this part shall submit a report and the fees required by subsections (2)(a) and (3)(a)(i) of this section.

History: En. Sec. 1, Ch. 385, L. 2007; amd. Sec. 9, Ch. 477, L. 2009; amd. Sec. 8, Ch. 198, L. 2013; amd. Sec. 12, Ch. 334, L. 2019; amd. Sec. 107, Ch. 324, L. 2021.

82-4-438. Opencut fund — use of fund. (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the opencut fund.

(2) There must be deposited in the account money received from the fees established in 82-4-437.

(3) Money in the fund must be spent for the purposes of administering and enforcing this part.

History: En. Sec. 1, Ch. 477, L. 2009; amd. Sec. 13, Ch. 334, L. 2019.

82-4-439. Extended review — criteria — timeframes. (1) The department may subject an opencut application to an extended review if the department determines that comments received at a public meeting held pursuant to 82-4-432 reveal the proposed plan of operation violates provisions of this part.

(2) (a) For a complete application subject to an extended review, the department shall, within 60 days from the date the department determines the application warrants an extended review, inspect the proposed site if the department determines an inspection is necessary and notify the applicant as to whether or not the application is acceptable pursuant to 82-4-432. If the application is unacceptable, the notice must include a detailed explanation of the deficiencies.

(b) Within 30 days of receipt of the applicant's response to the identified deficiencies, the department shall review the responses and notify the applicant as to whether or not the application is acceptable. If the application is unacceptable, the department shall notify the applicant in writing and include a detailed identification of the deficiencies.

(c) The department may for sufficient cause extend either or both of the review periods in subsection (2)(a) or (2)(b) for an additional 30 days if it notifies the applicant of the extension prior to the end of the respective original period. The department shall include in the notification of extension the reason for the extension.

(d) If the application is acceptable, the department shall issue a permit or a permit amendment to the operator that entitles the operator to engage in the opencut operation on the land described in the application.

History: En. Sec. 8, Ch. 477, L. 2009; amd. Sec. 6, Ch. 545, L. 2021.

82-4-440. Repealed. Sec. 7, Ch. 545, L. 2021.

History: En. Sec. 14, Ch. 334, L. 2019.

82-4-441. Administrative and judicial penalties — enforcement. (1) When the department has reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, an administrative deficiency notice, or a term or condition of a permit issued under this part, it shall send a letter of warning or violation to the person. The letter of warning or violation must describe the provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The letter must recommend corrective actions necessary to return to compliance. Issuance of a letter of warning or violation under this subsection does not limit the authority of the department under this part to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.

(2) By issuance of an order pursuant to subsection (5), the department may assess against a person who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a permit:

(a) an administrative penalty of not less than $100 or more than $1,000 for the violation; and

(b) an additional administrative penalty of not less than $100 or more than $1,000 for each day during which a violation continues.

(3) The department may bring a judicial action seeking a penalty of not more than $5,000 against a person who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a permit and a penalty of not more than $5,000 for each day that the violation continues. In determining the amount of the penalty, the district court shall consider the factors in subsection (4).

(4) Penalties assessed under this section must be determined in accordance with the penalty factors in 82-4-1001.

(5) (a) In addition to the letter of warning or violation sent pursuant to subsection (1), the department may also issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The order may require necessary corrective action within a reasonable period of time, may assess an administrative penalty determined in accordance with this section, or both. The order must be served personally or by certified mail.

(b) An order issued pursuant to subsection (5)(a) becomes final unless, within 30 days after the order is served, the person to whom the order is issued submits to the board a written request for a hearing stating the reason for the request. Service of an order by mail is complete 3 business days after mailing. If a request for a hearing is filed, a hearing must be held within a reasonable time under the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the board shall affirm, modify, or rescind the order.

(6) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a permit issued pursuant to this part. Actions for injunctions or penalties must be filed in the district court of the county in which the opencut operation is located.

(7) The provisions of this section do not limit the authority of the department to bring a judicial action for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this part.

(8) For the purposes of this section, "administrative deficiency" means a deficiency in reporting, recordkeeping, fee payment, or notification that the department determines is minor in nature, nonsubstantive, and unlikely to recur.

History: En. Sec. 1, Ch. 113, L. 1981; amd. Sec. 7, Ch. 280, L. 1987; amd. Sec. 4, Ch. 431, L. 1991; amd. Sec. 414, Ch. 418, L. 1995; amd. Sec. 2, Ch. 271, L. 1997; amd. Sec. 5, Ch. 273, L. 1997; amd. Sec. 18, Ch. 507, L. 1999; amd. Sec. 17, Ch. 79, L. 2001; amd. Sec. 6, Ch. 325, L. 2001; amd. Sec. 4, Ch. 486, L. 2005; amd. Sec. 15, Ch. 385, L. 2007; amd. Sec. 51, Ch. 535, L. 2021; amd. Sec. 2, Ch. 191, L. 2023.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Contested case procedure, Title 2, ch. 4, part 6.
Judicial review of contested cases, Title 2, ch. 4, part 7.
Injunctions, Title 27, ch. 19.
Penalties, fees, and interest, Title 82, ch. 4, part 10.

82-4-442. Suspension and revocation orders. (1) (a) The department may, after affording the operator an opportunity for an informal conference, order the suspension of a permit if:

(i) the operator fails to comply with a penalty order or a corrective action order issued pursuant to 82-4-441; or

(ii) the operator has violated this part, a rule adopted pursuant to this part, or the permit and the violation could reasonably be expected to create a danger to the health or safety of persons outside the permit area or significant environmental harm to land, air, or water. The order of suspension must be served on the operator personally or by certified mail addressed to the permanent address shown on the most recently filed annual report. The order of suspension must specify the provision of this part, the rules adopted under this part, or the permit violated and the facts alleged to constitute the violation and must, if the violation has not been corrected, order corrective action within a specified time period.

(b) The department may order immediate suspension of a permit whenever it finds that a violation of this part, the rules adopted under this part, or a permit is creating an imminent danger to the health or safety of persons outside the permit area. The order must require immediate corrective action.

(c) The operator upon whom an order is served may file a request for hearing with the board within 30 days of service of the order. The request for hearing must specify the reason for the request. The filing of a request for hearing on an order issued does not stay the suspension or corrective action requirement, but the board may, upon written request of the operator, stay either or both of these requirements.

(2) If the operator has not complied with the requirements set forth in the order of suspension within the time limits set in the order, the permit may be revoked by order of the department and the performance bond forfeited to the department. The operator may request a hearing before the board by submitting a written request stating the reason for the request to the board within 30 days after service of the order. If a hearing is requested within the 30-day period, the permit may not be revoked and the bond may not be forfeited until the board makes a final decision.

(3) If an operator fails to file the report required under 82-4-437, the department shall serve personally or by certified mail a notice letter informing the operator of the failure. If the operator does not file the report within 30 days of receipt of the letter, the department may issue a penalty order pursuant to 82-4-441 or a suspension order pursuant to this section. If the permit has been suspended, the department shall reinstate the permit upon compliance.

(4) Maintenance, monitoring, reporting, reclamation, and other activities required by statute, rule, or the permit and intended to protect public health or safety or the environment must continue during any period of suspension unless otherwise provided in the order.

History: En. Sec. 16, Ch. 385, L. 2007.

82-4-443 and 82-4-444 reserved.

82-4-445. Reclamation of abandoned mine sites. (1) Agents, employees, or contractors of the department may enter upon property for the purpose of conducting studies or exploratory work to determine whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or prevention of the adverse effects of past mining practices. The department may bring an injunctive action to restrain interference with the exercise of the right to enter and inspect granted in this subsection.

(2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding that:

(i) land or water resources on the property have been adversely affected by past mining practices;

(ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the property or to abate, control, or prevent the adverse effects should be taken; and

(iii) the owners of the land or water resources where entry must be made to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices.

(b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or contractors of the department may enter upon property adversely affected by past mining practices and other property necessary for access to the adversely affected property to do all things necessary or expedient to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:

(i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or

(ii) if neither is known, posting notice upon the property and advertising in a newspaper of general circulation in the county in which the property lies.

(c) Entry upon property pursuant to this section is not an act of condemnation of property or of trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(3) The department may acquire the necessary property by gift or purchase, or if the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) acquisition of the property is necessary for successful reclamation;

(b) the acquired property after restoration or reclamation or after abatement, control, or prevention of the adverse effects of past mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the adverse effects of past mining practices; or

(ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past mining practices.

(4) The department may record in the office of the clerk and recorder in the county in which property that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been mined and reclaimed. The notice must include the date and a brief description of the reclamation.

History: En. Sec. 2, Ch. 329, L. 1995; amd. Sec. 108, Ch. 324, L. 2021.

Cross-References

Fees of County Clerk, 7-4-2631.
Injunctions, Title 27, ch. 19.

82-4-446. Filing of lien for abandoned mine reclamation project. (1) Before commencement of a project using public funds to restore or reclaim property or to abate, control, or prevent adverse effects of past mining practices on private property, the department may file a notice of the right to claim a lien in the clerk and recorder's office in the county in which the majority of the property lies.

(2) If the department expends or allocates public funds conducting mine reclamation work under this part and if the department determines, based on an appraisal by an independent qualified appraiser chosen by the department, that the work has resulted or will result in a significant increase in the fair market value of property, the department may file a lien against the property reclaimed.

(3) Within 6 months after the completion of the project, the department shall itemize the funds expended and may file a lien statement. The lien statement must include:

(a) the value of the property before commencing the work of restoration or reclamation or abatement, control, or prevention of adverse effects of the past mining practices;

(b) the value of the property after the work has been completed;

(c) a listing of the appraisal upon which the values in subsections (3)(a) and (3)(b) are based and the location where those appraisals may be examined;
(d) the amount of public funds spent by the department on the project; and
(e) the amount of the lien.

(4) The amount of the lien must be the lesser of either the increase in the value of the property or the amount of public funds actually expended by the department.

(5) A lien may not be filed under this section against the property of a person who owned the surface rights prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this part.

(6) If a lien is filed, the department shall send, by certified mail to the owner's last-known address, copies of the lien, the statement of costs, and the appraisals to the owner of record of the property.

(7) The lien provided in this section is effective as of the date of expenditure of the public funds and has priority over all other liens or security interests that have attached to the property that is the subject of the lien, whenever those liens may have arisen, second only to real estate taxes imposed upon the property.

(8) Within 60 days after the department files the lien, the owner of the property to which the lien provided for in this section attaches may petition the district court for the county in which the majority of the property is located asking the district court to resolve disputes regarding the amount of actual funds spent by the department or to determine the increase in the market value of the property as a result of the restoration or reclamation or abatement, control, or prevention of the adverse effects of past mining practices. If it differs from the department's statement, the amount found by the court to be the lesser of the actual funds spent or the increase in market value is the amount of the lien and that amount must be recorded with the department's statement.

(9) A lien placed on property under this section may be satisfied by payment to the department of the amount of the lien. The department may accept partial payments on terms and conditions that the department specifies, but the lien is satisfied only to the extent of the value of the consideration received. A lien must be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Unsatisfied portions remain as a lien on the property. When a lien is partially or wholly satisfied, the department shall file with the clerk and recorder with whom the lien is filed an instrument releasing the lien in whole or in part.

(10) A lien placed on property under this section renews automatically, without a requirement on the part of the department to file a continuation notice, until the time that the lien is fully satisfied. Interest is payable on unsatisfied liens or portions of the liens provided for in this section, and it must be accumulated at the rate of 10% a year and may not be compounded.

(11) Funds derived from the satisfaction of liens established under this part must be deposited in the abandoned mine reclamation fund account from which the project was funded.

History: En. Sec. 3, Ch. 329, L. 1995.

Cross-References

Fees of County Clerk, 7-4-2631.
Tax lien on real property, 15-16-403.
Liens — generally, Title 71, ch. 3, part 1.

Part 5 reserved

Part 6
Interstate Mining Compact

82-4-601. Interstate Mining Compact. This state enacts into law and enters into the Interstate Mining Compact with all states that enact the compact in the form substantially contained in 82-4-602.

History: En. Sec. 1, Ch. 310, L. 2023.

82-4-602. Text of Interstate Mining Compact. The Interstate Mining Compact referred to in 82-4-601 through 82-4-604 reads as follows:

ARTICLE I
FINDINGS AND PURPOSES

(1) The party states find that:

(a) Mining and the contributions of mining to the economy and well-being of every state are of basic significance.

(b) The effects of mining on the availability of land, water, and other resources for other uses present special problems which properly can be approached only with due consideration for the rights and interests of those engaged in mining, those using or proposing to use these resources for other purposes, and the public.

(c) Measures for the reduction of the adverse effects of mining on land, water, and other resources may be costly and the devising of means to deal with them are of both public and private concern.

(d) Variables including soil structure and composition, physiography, climatic conditions, and the needs of the public make impracticable the application to all mining areas of a single standard for the conservation, adaptation, or restoration of mined land, or the development of mineral and other natural resources; but justifiable requirements of law and practice relating to the effects of mining on lands, water, and other resources may be reduced in equity or effectiveness unless they pertain similarly from state to state for all mining operations similarly situated.

(e) The states are in a position and have the responsibility to assure that mining is conducted in accordance with sound conservation principles and with due regard for local conditions.

(2) The purposes of this compact are to:

(a) Advance the protection and restoration of land, water, and other resources affected by mining.

(b) Assist in the reduction or elimination or counteracting of pollution or deterioration of land, water, and air attributable to mining.

(c) Encourage, with due recognition of relevant regional, physical, and other differences, programs in each of the party states which will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated.

(d) Assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that the use may be consistent with sound land use, public health, and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration, or protection of the land and other resources.

(e) Assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

ARTICLE II
DEFINITIONS

As used in this compact, the term:

(1) "Mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter, any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location, and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but does not include those aspects of deep mining not having significant effect on the surface, and does not include excavation of grading when conducted solely in aid of on-site farming or construction.

(2) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a Territory or Possession of the United States.

ARTICLE III
STATE PROGRAMS

Each party state agrees that within a reasonable time it will formulate and establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:

(1) The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property on that land resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of those operations.

(2) The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational, or aesthetic value and utility of land and water.

(3) The institution and maintenance of suitable programs of adaptation, restoration, and rehabilitation of mined lands.

(4) The prevention, abatement and control of water, air, and soil pollution resulting from mining — present, past, and future.

ARTICLE IV
POWERS

In addition to any other powers conferred upon the Interstate Mining Commission, established by article V of this compact, the Commission shall have power to:

(1) Study mining operations, processes, and techniques for the purpose of gaining knowledge concerning the effects of the operations, processes, and techniques on land, soil, water, air, plant and animal life, recreation, and patterns of community or regional development or change.

(2) Study the conservation, adaptation, improvement, and restoration of land and related resources affected by mining.

(3) Make recommendations concerning any aspect or aspects of law or practice and governmental administration dealing with matters within the purview of this compact.

(4) Gather and disseminate information relating to any of the matters within the purview of this compact.

(5) Cooperate with the federal government and any public or private entities having interests in any subject coming within the purview of this compact.

(6) Consult, upon the request of a party state and within available resources, with the officials of the state in respect to any problem within the purview of this compact.

(7) Study and make recommendations with respect to any practice, process, technique, or course of action that may improve the efficiency of mining or the economic yield from mining operations.

(8) Study and make recommendations relating to the safeguarding of access to resources which are or may become the subject of mining operations to the end that the needs of the economy for the products of mining may not be adversely affected by unplanned or inappropriate use of land and other resources containing minerals or otherwise connected with actual or potential mining sites.

ARTICLE V
THE COMMISSION

(1) There is an agency of the party states to be known as the "Interstate Mining Commission", or "the Commission". The Commission is composed of one commissioner from each party state who is the governor of that state. Pursuant to the laws of the party state, each governor shall have the assistance of an advisory body (including membership from mining industries, conservation interests, and other public and private interests as may be appropriate) in considering problems relating to mining and in discharging the responsibilities as a Commissioner on the Commission. In any instance where a governor is unable to attend a meeting of the commission or perform any other function in connection with the business of the commission, the governor shall designate an alternate, from among the members of the advisory body required by this paragraph, who shall represent the governor and act in the governor's

place and stead. The designation of an alternate shall be communicated by the governor to the commission as provided in its bylaws.

(2) The commissioner is entitled to one vote each on the commission. No action of the commission making a recommendation pursuant to article IV-3, IV-7, and IV-8 or requesting, accepting, or disposing of funds, services, or other property pursuant to this paragraph, article V (7), V (8), or VII shall be valid unless taken at a meeting at which a majority of the total number of votes on the commission is cast in favor of the action. All other action shall be by a majority of those present and voting: provided that action of the commission is only at a meeting at which a majority of the commissioners, or their alternates, is present. The commission may establish and maintain facilities as may be necessary for the transaction of its business. The commission may acquire, hold, and convey real and personal property and any interest in that property.

(3) The commission shall have a seal.

(4) The commission shall elect annually, from among its members, a presiding officer, a vice-presiding officer, and a treasurer. The commission shall appoint an executive director and fix the executive director's duties and compensation. The executive director shall serve at the pleasure of the commission. The executive director, the treasurer, and other personnel as the commission designates shall be bonded. The amount or amounts of the bond or bonds is determined by the commission.

(5) Irrespective of the civil service, personnel, or other merit system laws of any of the party states, the executive director, with the approval of the commission, shall appoint, remove, or discharge personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of personnel.

(6) The commission may establish and maintain independently or in conjunction with a party state, a suitable retirement system for its employees. Employees of the commission are eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes steps necessary pursuant to the laws of the United States to participate in a program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in additional programs of employee benefits as it deems appropriate.

(7) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.

(8) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation, and may receive, utilize, and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph (7) of the article shall be reported in the annual report of the commission. The report shall include the nature, amount, and conditions, if any, of the donation, grant, or services borrowed and the identity of the donor or lender.

(9) The commission shall adopt bylaws for the conduct of its business and has the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and file a copy of its bylaws and a copy of any amendment to the bylaws with the appropriate agency or officer in each of the party states.

(10) The commission annually shall make to the governor, legislature, and advisory body required by article V(1) of each party state a report covering the activities of the commission for the preceding year, and embodying the recommendations made by the commission. The commission may make additional reports as it deems desirable.

ARTICLE VI
ADVISORY, TECHNICAL, AND REGIONAL COMMITTEES

The commission shall establish advisory, technical, and regional committees as it deems necessary, membership on which includes private persons and public officials and shall cooperate with the use and services of any committees and the organizations which the members represent in furthering any of its activities. The committees may be formed to consider problems of special interest to any party states, problems dealing with particular commodities or types of mining operations, problems related to reclamation, development, or use of mined land, or any other matters of concern to the commission.

ARTICLE VII
FINANCE

(1) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature.

(2) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations requested under any budget shall be apportioned among the party states as follows: one-half in equal shares, and the remainder in proportion to the value of minerals, ores, and other solid matter mined. In determining the values, the commission shall employ available public source or sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of minerals, ores, and other solid matter mined.

(3) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under article V(8) of this compact; provided that the commission takes specific action setting aside the funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under article V(8), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(5) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(6) This compact may not be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VIII
ENTRY INTO FORCE AND WITHDRAWAL

(1) This compact shall enter into force when enacted into law by any four or more states. After that enactment, this compact becomes effective as to any other state upon its enactment of the compact.

(2) Any party state may withdraw from this compact by enacting a statute repealing the compact, but withdrawal does not take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. A withdrawal does not affect any liability already incurred by or chargeable to a party state prior to the time of withdrawal.

ARTICLE IX
EFFECT ON OTHER LAWS

This compact does not limit, repeal, or supersede any other law of any party state.

ARTICLE X
CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes of the compact. The provisions of this compact are severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the applicability of the compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of the compact to any government, agency, person, or circumstance is not affected. If this compact is held contrary to the constitution of any state participating in the compact, the compact remains in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 2, Ch. 310, L. 2023.

82-4-603. Membership and applicability. (1) The governor may appoint a designee to serve as the governor's official representative to the compact and to perform all functions in connection with the business of the compact.

(2) Provisions and policies of the Interstate Mining Compact may not be construed to limit, repeal, or supersede any law of the state of Montana.

(3) (a) The governor and the legislature, or agents of either, may inspect the books and accounts of the Interstate Mining Compact Commission at any reasonable time while the state is a member.

(b) A copy of the bylaws of the Interstate Mining Compact Commission must be placed on file with the department of environmental quality and be available for inspection at any reasonable time by the legislature or any interested citizen.

(4) The state of Montana is not liable for the obligations or solvency of:

(a) the retirement system described in article V(6) of the compact; or

(b) a program of employee benefits described in article V(6) of the compact.

(5) As used in article V(1) of the compact, "agency" does not mean an agency of the state of Montana or any political subdivision of the state of Montana.

History: En. Sec. 3, Ch. 310, L. 2023.

82-4-604. Expenses. The department of environmental quality may pay annually out of funds collected from mining fees, abandoned mine land fees and funds, natural resource operations, or from funds granted to the state by the federal office of surface mining reclamation and enforcement, the annual membership dues payable to the Interstate Mining Compact commission for the membership of the state of Montana in that organization.

History: En. Sec. 4, Ch. 310, L. 2023.

Parts 7 through 9 reserved

Part 10
Penalties, Fees, and Interest

82-4-1001. Penalty factors. (1) In determining the amount of an administrative or civil penalty assessed under the statutes listed in subsection (4), the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

(a) the nature, extent, and gravity of the violation;

(b) the circumstances of the violation;

(c) the violator's prior history of any violation, which:

(i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;

(ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and

(iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;

(d) the economic benefit or savings resulting from the violator's action;

(e) the violator's good faith and cooperation;

(f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and

(g) other matters that justice may require.

(2) Except for penalties assessed under 82-4-254, after the amount of a penalty is determined under (1), the department of environmental quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.

(3) Except for penalties assessed under 82-4-254, the department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to perform.

(4) This section applies to penalties assessed by the department of environmental quality or the district court under 82-4-141, 82-4-254, 82-4-361, and 82-4-441.

(5) The department of environmental quality may adopt rules to implement this section.

History: **En. Sec. 3, Ch. 487, L. 2005; amd. Sec. 109, Ch. 324, L. 2021.**

82-4-1002. Collection of penalties, fees, late fees, and interest. (1) If the department of environmental quality is unable to collect penalties, fees, late fees, or interest assessed pursuant to the provisions of this chapter, the department of environmental quality may assign the debt to a collection service or transfer the debt to the department of revenue pursuant to Title 17, chapter 4, part 1.

(2) (a) The reasonable collection costs of a collection service, if approved by the department of environmental quality, or assistance costs charged the department of environmental quality by the department of revenue pursuant to 17-4-103(3) may be added to the debt for which collection is being sought.

(b) (i) All money collected by the department of revenue is subject to the provisions of 17-4-106.

(ii) All money collected by a collection service must be paid to the department of environmental quality and deposited in the general fund or the accounts specified in statute for the assessed penalties, fees, late fees, or interest, except that the collection service may retain those collection costs or, if the total debt is not collected, that portion of collection costs that are approved by the department.

History: **En. Sec. 4, Ch. 487, L. 2005.**

82-4-1003 through 82-4-1005 reserved.

82-4-1006. Abandoned mine reclamation account. (1) There is an abandoned mine reclamation account in the federal special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) money received by the state from the federal government pursuant to 30 U.S.C. 1232 through 1243; and

(b) interest earned on the account.

(3) (a) Money in the account is available to the department of environmental quality by appropriation and must be used to pay for reclamation or drainage abatement on eligible lands or waters. Eligible lands and waters are those:

(i) that were mined or processed for minerals or materials or were affected by that mining or processing;

(ii) that were abandoned or left in an inadequate reclamation status prior to:

(A) November 26, 1980, for federal lands administered by the United States bureau of land management;

(B) August 28, 1974, for federal lands administered by the United States forest service; and

(C) August 3, 1977, for state lands, private lands, and federal lands not subject to subsection (3)(a)(ii)(A) or (3)(a)(ii)(B); and

(iii) for which there is no continuing reclamation responsibility under state or federal law.

(b) Allowable reclamation or abatement activities under subsection (3)(a) include but are not limited to:

(i) reclamation of abandoned surface mine areas, abandoned mine processing areas, and abandoned mine refuse disposal areas;

(ii) sealing and filling abandoned mine entries and voids;

(iii) planting of land adversely affected by past mining practices to prevent erosion and sedimentation;

(iv) prevention, abatement, treatment, and control of water pollution created by abandoned mine drainage, including restoration of stream beds and construction and operation of water treatment plants;

(v) prevention, abatement, and control of burning coal refuse disposal areas and burning coal in situ;

(vi) prevention, abatement, and control of abandoned mine subsidence; and

(vii) payment of costs of administration of the abandoned mine land reclamation program administered by the department of environmental quality.

(4) Money in the account that is subject to restrictions on use pursuant to federal law, regulation, or grant condition may be used only for the purposes allowed by the federal provision.

(5) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account until spent or appropriated by the legislature.

History: En. Sec. 1, Ch. 357, L. 2007.

CHAPTERS 5 THROUGH 9
RESERVED

CHAPTER 10
OIL AND GAS — GENERAL PROVISIONS

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82-10-602. Definitions.
82-10-603. Fracturing fluid disclosure — requirements.
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Chapter Cross-References

Powers of cities and towns to acquire natural gas and distributing systems, 7-13-4102.

Depletion allowance — state tax, 15-31-114.

Oil and gas severance tax, Title 15, ch. 36.

Mining and oil companies — fraudulent handling of finances, Title 30, ch. 14, part 7.

Real estate license law not to apply to persons performing any act with respect to prospecting, mining, or drilling, 37-51-103.

Regulation of pipeline carriers of oil, Title 69, ch. 13.

Eminent domain — appropriation of underground natural gas reservoir — effect on landowner's right to drill, 70-30-105.
Labor and material liens on oil and gas wells and pipelines, Title 71, ch. 3, part 10.
Montana Major Facility Siting Act, Title 75, ch. 20.
State lands — oil and gas, Title 77, ch. 3, part 4.
Underground storage of natural gas, Title 77, ch. 3, part 5.
Cancellation and forfeiture of oil and gas leases, Title 82, ch. 1, part 2.
Trusts for unlocatable mineral owners, Title 82, ch. 1, part 3.

Part 1
Royalty Interests

82-10-101. Action for accounting for royalty. (1) Whenever an owner of a royalty interest in or attaching to lands producing natural gas, oil, or other minerals or in or to the natural gas, oil, or other mineral production from said lands, whether said royalty is payable in kind out of the product of the lands or out of the money proceeds from the sale of the product of said lands, shall make a written demand upon the person or persons obligated to deliver or pay such royalty for an accounting of the natural gas, oil, or other minerals produced from said lands and makes written demand for delivery or payment of such owner's royalty as may then be due and the person or persons obligated for the delivery or payment of said royalty fail to make the accounting demanded and the payment or delivery of the royalty due within a period of 60 days following the date upon which said demand is made, then the owner of said royalty may file an action in the district court of the county wherein said lands are located to compel the accounting demanded and to recover the payment or delivery of the royalty due against the person or persons obligated as aforesaid.

(2) In said action the successful party or parties recovering judgment against the person or persons obligated shall, in addition to relief by way of accounting and recovery of the royalty due as hereinabove provided, also recover judgment for a sum of money by way of reasonable attorney fees to be allowed by the court together with the costs allowed to successful parties by law in actions generally in said court.

(3) Whenever the same person or persons is or are obligated for delivery or payment of said royalty to separate owners of royalty in or to a tract of land or any portion of said land or the product of the whole or any part of said land, then any number of said owners of royalty may join their separate causes of action as parties plaintiff in the action herein provided for, and in their complaint filed in said action, each cause of action of each of the several plaintiffs shall be set forth separately in said complaint, and the judgment given, made, and rendered upon said complaint shall adjudge the relief to one or more of the plaintiffs and deny relief to any one or more of said plaintiffs accordingly as the evidence may establish.

(4) If the defendant or defendants prevail in said action against any one or more of said plaintiffs, the court shall adjudge and allow to such defendant or defendants and against the unsuccessful plaintiff or plaintiffs recovery of a sum of money as reasonable attorney fees to be allowed by the court and adjudge and allow costs to said defendant to be recovered from the said unsuccessful plaintiff or plaintiffs in said action, as provided for by law in actions generally in said court.

History: **En. Sec. 1, Ch. 78, L. 1943; R.C.M. 1947, 60-501.**

Cross-References

Allowable costs, Title 25, ch. 10, part 2.

82-10-102. Remedy not exclusive. The remedy provided for in 82-10-101 is in the nature of a special remedy additional to and not a substitute for other remedies given by law to owners of royalties in lands of the character specified, and all acts or parts of acts in conflict with the provisions of 82-10-101 shall not apply in actions authorized and provided for by that section.

History: **En. Sec. 2, Ch. 78, L. 1943; R.C.M. 1947, 60-502; amd. Sec. 2, Ch. 500, L. 1983; amd. Sec. 3, Ch. 582, L. 1983.**

82-10-103. Obligation to pay royalties as essence of contract — interest. (1) The obligation arising under an oil and gas lease to pay oil or gas royalties to the royalty owner or the owner's assignee, to deliver oil or gas to a purchaser to the credit of the royalty owner or the owner's assignee, or to pay a portion of the proceeds of the sale of the oil or gas to the royalty owner or the owner's assignee is of the essence in the lease contract.

(2) If the operator under an oil and gas lease fails to pay oil or gas royalties to the royalty owner or the owner's assignee within 120 days after the initial oil or gas produced under the lease is marketed and within 60 days for all oil and 90 days for all gas produced and marketed, the unpaid royalties must bear interest at the maximum rate of interest authorized under 31-1-107 from the date due until paid. The operator may remit semiannually to a person entitled to royalties the aggregate of 6 months' royalties whenever the aggregate amount is less than $50 and annually whenever the aggregate amount is less than $10.

(3) A royalty owner seeking a remedy for failure to make payments under the lease or seeking payments under this section shall bring the action in the district court for the county in which the oil or gas well is located, and that court has jurisdiction over any actions brought under this section. The prevailing party in any proceeding brought under this section is entitled to recover court costs and reasonable attorney fees.

(4) This section does not apply if a royalty owner or the owner's assignee has elected to take the owner's or assignee's proportionate share of production in kind or whenever there is a dispute as to the title of the minerals or entitlement to royalties, the outcome of which would affect distribution of royalty payments.

History: En. Sec. 1, Ch. 500, L. 1983; amd. Sec. 1, Ch. 118, L. 1985; amd. Sec. 2735, Ch. 56, L. 2009.

Cross-References

Allowable costs, Title 25, ch. 10, part 2.

82-10-104. Payment of royalties — form of record required. (1) An oil and gas producer paying royalties by check, draft, or order shall include with every payment a form showing the following matters relating to that payment:

(a) the name of the royalty owner to whom the payment is made;
(b) the date of the check, draft, or order;
(c) any royalty owner identification number used by the producer for the royalty owner;
(d) the time period during which production occurred for which payment is being made;
(e) any number used to identify the lease under which production occurred;
(f) the type of product produced;
(g) barrels of oil and cubic feet of gas for which payment is made;
(h) the amount and type of all taxes withheld;
(i) the net value of production;
(j) the royalty owner's net value; and
(k) contact information for obtaining additional information regarding the payment and answers to questions.

(2) In addition to the information required in subsection (1), an oil and gas producer paying royalties to a royalty owner shall, at the time of payment, specify by line item every charge assessed against the royalty owner.

(3) Any person purposely and knowingly violating the provisions of subsection (1) or (2) is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $1,000.

History: En. Sec. 1, Ch. 582, L. 1983; amd. Sec. 1, Ch. 19, L. 2005.

Cross-References

Actions arising from seizure or sale of property for taxes, 27-2-210.

82-10-105 through 82-10-109 reserved.

82-10-110. Division order — definition — effect. (1) As used in this section, the term "division order" is limited to mean an instrument executed by the lessor of an oil or gas lease to authorize the sale of and direct the distribution of proceeds from the sale of oil, gas, casinghead gas, or other related hydrocarbons.

(2) A division order may not alter or amend the terms of the underlying oil or gas lease. A division order does not relieve a lessee of any liabilities or obligations under the terms of the underlying oil or gas lease.

(3) A division order must be in writing and:

(a) must warrant the division of interest;

(b) must contain the name, address, and tax identification number of each interest owner to whom disbursements are made by the holder of the proceeds from the sale of oil, gas, casinghead gas, or other related hydrocarbons;

(c) must contain a provision requiring notice of change of ownership; and
(d) may contain any other terms that are necessary to facilitate the transaction.

History: En. Sec. 1, Ch. 607, L. 1993.

Part 2
Lease of Local Government Land

Part Cross-References

Actions arising from seizure or sale of property for taxes, 27-2-210.
Lease of state land, Title 77, ch. 3, part 4.

82-10-201. Authorization for lease and terms — land not subject to leasing. The governing body of any county, city, town, school district, or incorporated political subdivision within the state of Montana may, if in the best interests of the county, city, town, school district, or incorporated political subdivision, lease any real property owned by the county, city, town, school district, or incorporated political subdivision for oil and gas development purposes. Such leases shall be made upon the best terms obtainable, shall provide for such terms, except as hereinafter provided, as the governing body shall consider to be for the best interests of the county, city, town, school district, or incorporated political subdivision, shall reserve a royalty of not less than 12½% which shall include any royalty payable to any person other than the lessor, and shall be for a period not exceeding 10 years and so long thereafter as oil, gas, or other hydrocarbons shall be produced from the premises embraced in the lease. However, nothing contained herein shall authorize the leasing of lands acquired by a county by tax deed except under the provisions of Title 7, chapter 8, part 25.

History: En. Sec. 1, Ch. 131, L. 1953; R.C.M. 1947, 60-701; amd. Sec. 6, Ch. 201, L. 1979.

Cross-References

Reservation of mineral royalty by county, 7-8-2305.
Management of county lands, Title 7, ch. 8, part 25.
"School district" to include community college district, 20-15-403.
Actions arising from seizure or sale of property for taxes, 27-2-210.
Oil and gas leases authorized on state lands, 77-3-401.

82-10-202. Acreage pooling. When deemed in the best interests of the county, city, town, school district, or incorporated political subdivision, the governing body may enter into agreements for the pooling of acreage with others for unit operations for the production of oil or gas or both and for the apportionment of oil or gas royalties or both on an acreage or other equitable basis and may modify existing leases and leases hereafter entered into with respect to delay rentals, delay drilling penalties, and royalties in accordance with such pooling agreements and such unit plans of operation; provided, however, that such agreements shall not change the percentages of royalties to be paid to the county, city, town, school district, or incorporated political subdivision from the percentages as fixed in its leases.

History: En. Sec. 2, Ch. 131, L. 1953; R.C.M. 1947, 60-702.

Cross-References

"School district" to include community college district, 20-15-403.
Pooling of interest within spacing unit, 82-11-202.

82-10-203. Interference with normal use of land prohibited. In the event such real property is held or used for a specific purpose, any lease made under the provisions of this part shall contain such protective provisions as may be necessary to prevent any interference by the lessee with the normal use of such real property for such purpose by the county, city, town, school district, or incorporated political subdivision.

History: En. Sec. 3, Ch. 131, L. 1953; R.C.M. 1947, 60-703.

Cross-References

"School district" to include community college district, 20-15-403.

82-10-204. Lease of acquired oil and gas interests. When in any deed or contract for sale a county has reserved or excepted an interest in oil and gas in and under any land acquired by tax deed, the board of county commissioners may lease such interest for oil and gas development purposes upon the same terms and conditions as are provided for the leasing of lands which have been acquired by tax deed, offered for sale and not sold or may ratify, confirm, and adopt any then-existing mineral or oil and gas lease insofar as it describes such land. All such leases, ratifications, confirmations, and adoptions heretofore executed by the board of county commissioners are declared to be valid and are ratified, approved, and confirmed.

History: **En. Sec. 1, Ch. 155, L. 1957; R.C.M. 1947, 60-704.**

Cross-References

Reservation of royalty in tax deed lands, 7-8-2305.

Actions arising from seizure or sale of property for taxes, 27-2-210.

Part 3
Underground Gas Storage Reservoirs

Part Cross-References

Underground natural gas reservoir — appropriation by eminent domain, 70-30-104, 70-30-203.

Underground natural gas reservoir — preliminary condemnation order, 70-30-206.

Underground storage of natural gas on state land, Title 77, ch. 3, part 5.

82-10-301. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(2) "Native gas" means gas which has not been previously withdrawn from the earth.

(3) "Natural gas" means gas either while in its original state or after the same has been processed by removal therefrom of component parts not essential to its use for light and fuel.

(4) "Natural gas public utility" means any person, firm, or corporation authorized to do business in this state and engaged in the business of transporting or distributing natural gas by means of pipelines into, within, or through this state for ultimate public use.

(5) "Underground reservoir" means any subsurface sand, stratum, or formation of the earth suitable for the injection and storage of natural gas therein and the withdrawal of natural gas therefrom.

(6) "Underground storage" means the process of injecting and storing of natural gas within and withdrawing of natural gas from an underground reservoir.

History: **En. Sec. 1, Ch. 259, L. 1955; amd. Sec. 83, Ch. 253, L. 1974; R.C.M. 1947, 60-801.**

Cross-References

Underground natural gas reservoir — estates subject to eminent domain, 70-30-104.

82-10-302. Policy. (1) The underground storage of natural gas which promotes conservation thereof, which permits the building of reserves for orderly withdrawal in periods of peak demand, which makes more readily available natural gas to the domestic, commercial, and industrial consumers of this state, or which provides a better year-round market to the various gas fields serves the public interest and welfare of this state.

(2) Therefore, in the manner hereinafter provided, the board and the court may find and determine that the underground storage of natural gas as hereinbefore defined is in the public interest.

History: **En. Sec. 2, Ch. 259, L. 1955; amd. Sec. 84, Ch. 253, L. 1974; R.C.M. 1947, 60-802.**

82-10-303. Use of eminent domain to acquire underground reservoirs. (1) A natural gas public utility may acquire, through the exercise of the right of eminent domain as provided in Title 70, chapter 30, and this part, an underground reservoir for its use for the underground storage of natural gas. The right of eminent domain may be exercised only if the board finds that the reservoir is suitable and its taking is in the public interest for the underground storage of natural gas. In connection with the underground reservoir, the utility may acquire other interests in property that may be required to adequately maintain and operate the underground reservoir facilities. The acquisition by the exercise of the right of eminent domain of underground reservoirs granted by this section is limited as follows:

(a) Sand, a formation, or a stratum that is producing, that has produced, or that is capable of producing oil is not subject to taking under this section.

(b) A gas-bearing sand, formation, or stratum is not subject to taking under this section unless the recoverable volumes of native gas in the interest sought to be taken have all been produced or unless the sand, formation, or stratum has a greater value or utility as an underground reservoir for the purpose of ensuring an adequate supply of natural gas for domestic, commercial, or industrial consumers of natural gas or for the conservation of natural gas than for the production of the remaining relatively small volumes of native gas as compared with the original volumes of natural gas in the sand, formation, or stratum. Gas, sand, formation, or stratum may not be acquired under this part when the gas in the underground reservoir is being used for the secondary recovery of oil unless gas in necessary and required amounts is furnished to the operator of the secondary recovery operations for as long as oil is produced in paying quantities in the secondary operations for the recovery of oil at the same cost as the cost to the operator at the time of acquisition of the gas being used in the secondary operations. However, the amount of gas furnished may not exceed the quantity of the appropriated gas that remained recoverable from the sand, formation, or stratum at the time of its taking if the operator was at that time entitled to all of the gas or if entitled to less than all of the gas, then an amount not to exceed the quantity of gas to which the operator was entitled.

(c) Only the area of the underground sand, formation, or stratum that may reasonably be expected to be penetrated by gas displaced or injected into the underground reservoir may be taken.

(d) Rights or interests in existing underground reservoirs being used for the injection, storage, or withdrawal of natural gas owned or operated by a natural gas public utility other than the natural gas public utility seeking to acquire the reservoir are not subject to appropriation.

(2) The exercise of the right of eminent domain granted by this section is without prejudice to the rights of the owner of the land or of other rights or interests in the land to drill or bore into or through the underground reservoir in a manner that complies with orders and rules of the board issued for the purpose of protecting the underground reservoir against pollution and against the escape of natural gas and is without prejudice to the rights of the owner of the land or other rights or interests in the land as to all other uses of the land. The additional cost of complying with those rules or orders in order to protect the reservoir must be paid by the natural gas public utility.

History: **En. Sec. 3, Ch. 259, L. 1955; amd. Sec. 85, Ch. 253, L. 1974; R.C.M. 1947, 60-803; amd. Sec. 100, Ch. 125, L. 2001.**

Cross-References

Eminent domain generally, Title 70, ch. 30, 31.

82-10-304. Certificate of board required prior to use of eminent domain. (1) A natural gas public utility desiring to exercise the right of eminent domain pursuant to Title 70, chapter 30, and this chapter for taking property to use for underground storage of natural gas shall, as a condition precedent to the filing of its complaint in the district court, apply for and obtain a certificate from the board. The certificate must contain the following findings of the board:

(a) that the underground sand, stratum, or formation sought to be taken is suitable for an underground reservoir for the storage of natural gas and that its use for that purpose is in the public interest;

(b) the amount of native gas, if any, remaining in the reservoir and the portion of gas recoverable; and

(c) that the applicant has in good faith sought to acquire the rights sought under this part.

(2) The board may not issue the certificate until after a public hearing is held on the application, pursuant to notice given to all persons known to have an interest in the property proposed to be acquired in the manner provided by the laws of the state for service of process in a civil action.

History: **En. Sec. 4, Ch. 259, L. 1955; amd. Sec. 86, Ch. 253, L. 1974; R.C.M. 1947, 60-804; amd. Sec. 101, Ch. 125, L. 2001.**

Cross-References

Contents of complaint for eminent domain, 70-30-203.

82-10-305. Proceedings. After obtaining a certificate from the board, a natural gas public utility desiring to exercise the right of eminent domain for the purpose of acquiring property for the underground storage of natural gas shall proceed as provided in this section. The natural gas public utility shall present to the district court of the county in which the land is situated a complaint setting forth the purpose for which the property is sought to be taken, a description of the property sought to be taken, and the names of the owners of the property as shown by the records of the county. The utility shall file the certificate of the board as a part of its complaint, and an order by the court granting the complaint may not be entered without the certificate being filed with the complaint. Subsequent proceedings must follow the procedure provided by Title 70, chapter 30.

History: **En. Sec. 5, Ch. 259, L. 1955; amd. Sec. 87, Ch. 253, L. 1974; R.C.M. 1947, 60-805; amd. Sec. 102, Ch. 125, L. 2001.**

Cross-References

Regulation of public utilities, Title 69, ch. 3.
Eminent domain procedure — contents of complaint, 70-30-203.

Part 4
Abandoned Oil and Gas Wells — Reclamation

82-10-401. Notice required before abandonment of well — owner's option. A person may not plug and abandon an oil or gas well located within this state without first giving reasonable notice of the intention to do so to the surface owner of record of the land on which the well is located. Upon receipt of notice to plug and abandon, the surface owner may, by written notice given within 15 days after notice, direct that the well pipe for the well must be buried to a depth of not less than 3 feet. The board of oil and gas conservation shall adopt regulations to implement this section.

History: **En. 60-901 by Sec. 1, Ch. 161, L. 1974; R.C.M. 1974, 60-901; amd. Sec. 2736, Ch. 56, L. 2009.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Geophysical exploration — surety bond — restoration of surface, 82-1-104.

82-10-402. *(Temporary)* **Inventory of abandoned wells and seismic operations — reclamation procedures.** (1) The board of oil and gas conservation shall maintain a record of the abandoned oil or gas wells, injection wells, sumps, and seismographic shot holes in the state that disturb land, water, or wildlife resources to a degree not in compliance with plugging, pollution prevention, and reclamation rules of the board. This record must be compiled from petitions or written statements from the owners of surface rights or lessees.

(2) The board shall check the record compiled under subsection (1) against its drilling records and shall determine and list the name of the person who abandoned the well, sump, or hole, whenever this information is available. When a listed person applies to the board for a new drilling permit, the board may issue the permit only after approving a plan by which the applicant will reclaim the land disturbed by the applicant's abandoned wells, sumps, or holes within 3 years.

(3) When the person who abandoned a well, sump, or hole cannot be identified or located or when the person does not have sufficient financial resources to pay for complete reclamation, the board may then reclaim the disturbed land with funds available from the oil and gas production damage mitigation account in a manner consistent with the requirements for the use of the account provided in 82-11-161 and 82-11-164.

(4) As used in subsection (3), "well" includes a class II injection well, as defined in 82-11-101, for which a drilling permit or a permit authorizing use of a well for that purpose was granted by the board after June 30, 1989, and water source wells used in connection with enhanced recovery projects.

82-10-402. *(Effective on occurrence of contingency)* **Inventory of abandoned wells and seismic operations — reclamation procedures.** (1) The board of oil and gas conservation shall maintain a record of the abandoned oil or gas wells, injection wells, sumps, and seismographic shot holes in the state that disturb land, water, or wildlife resources to a degree not in compliance with plugging, pollution prevention, and reclamation rules of the board. This record must be compiled from petitions or written statements from the owners of surface rights or lessees.

(2) The board shall check the record compiled under subsection (1) against its drilling records and shall determine and list the name of the person who abandoned the well, sump, or hole, whenever this information is available. When a listed person applies to the board for a new drilling permit, the board may issue the permit only after approving a plan by which the applicant will reclaim the land disturbed by the applicant's abandoned wells, sumps, or holes within 3 years.

(3) When the person who abandoned a well, sump, or hole cannot be identified or located or when the person does not have sufficient financial resources to pay for complete reclamation, the board may then reclaim the disturbed land with funds available from the oil and gas production damage mitigation account in a manner consistent with the requirements for the use of the account provided in 82-11-161 and 82-11-164.

(4) As used in subsection (3), "well" includes a class II injection well, as defined in 82-11-101, for which a drilling permit or a permit authorizing use of a well for that purpose was granted by the board after June 30, 1989, and water source wells used in connection with enhanced recovery projects.

(5) When the person who abandoned a carbon dioxide injection well, as defined in 82-11-101, cannot be identified or located to pay for complete reclamation, the board may then reclaim the disturbed land with funds available in the geologic storage reservoir program account.

History: En. 60-149 by Sec. 3, Ch. 260, L. 1974; R.C.M. 1947, 60-149; amd. Sec. 3, Ch. 530, L. 1989; amd. Sec. 2737, Ch. 56, L. 2009; amd. Sec. 11, Ch. 474, L. 2009.

Compiler's Comments

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

Cross-References

Seismographic permit required, 82-1-105.

Part 5
Surface Owner Damage and Disruption Compensation

82-10-501. Purpose — legislative findings. (1) The purpose of this part is to provide for the protection of surface owners of land underlaid with oil and gas reserves while allowing for the necessary development of those reserves.

(2) To carry out the purpose described in subsection (1), the legislature finds that:

(a) it is necessary to protect the economic well-being of individuals engaged in agricultural production;

(b) exploration for and development of oil and gas reserves in this state, while necessary, interferes with the use, agricultural or otherwise, of the surface of certain land; and

(c) owners of the surface estate should be justly compensated for use of their property and interference with the use of their property due to oil and gas development.

History: En. Sec. 1, Ch. 199, L. 1981.

Cross-References

Availability of remedies, Title 27, ch. 1.

82-10-502. Definitions. As used in this part, the following definitions apply:

(1) "Agricultural production" means the production of any growing grass, crops, or trees attached to the surface of the land or farm animals with commercial value.

(2) "Lost land value" means the value of the highest and best reasonably available use of the land directly utilized by oil and gas operations and production, other than uses appurtenant to the mineral estate.

(3) "Oil and gas developer or operator" means the person who acquires the oil and gas lease for the purpose of extracting oil and gas.

(4) "Oil and gas estate" means an estate in or ownership of all or part of the oil and gas underlying a specified tract of land.

(5) "Oil and gas operations" means the exploration for or drilling of an oil and gas well that requires entry upon the surface estate and is begun subsequent to June 1, 1981, and the production operations directly related to the exploration or drilling.

(6) "Reasonably available use" means the present use or a future use for which a permit, if necessary, has been issued under applicable law.

(7) "Surface owner" means the person who holds record title to or has a purchaser's interest in the surface of the land.

History: En. Sec. 2, Ch. 199, L. 1981; amd. Sec. 1, Ch. 345, L. 2013.

Cross-References

Prohibited transactions with foreign adversaries, 35-30-103.

82-10-503. Notice of drilling operations. (1) In addition to the requirements for geophysical exploration activities governed by Title 82, chapter 1, part 1, the oil and gas developer or operator shall give the surface owner and any purchaser under contract for deed written notice of the drilling operations that the oil and gas developer or operator plans to undertake. The notice must be given to the record surface owner and any purchaser under contract for deed at their addresses as shown by the records of the county clerk and recorder at the time the notice is given. The notice must include a copy of this part and, if available, a current publication produced by the environmental quality council entitled "A Guide to Split Estates in Oil and Gas Development". The notice must sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property. The notice must be given no more than 180 days and no fewer than 20 days before any activity that disturbs the land surface. The surface owner may waive the notice requirement.

(2) The surface owner is responsible for providing the name and address of the oil and gas developer or operator to any lessees, tenants, or other parties responsible for surface operations on the property.

(3) Prior to the oil and gas developer or operator providing the notice required in subsection (1), a person qualified under 70-16-111 may enter the land to investigate and use boundary evidence and perform boundary, well site location, and access road surveys if the notice requirements of 70-16-111 are met. However, the oil and gas developer or operator shall provide the notice required pursuant to subsection (1) prior to any activity that disturbs the land surface.

History: En. Sec. 3, Ch. 199, L. 1981; amd. Sec. 27, Ch. 526, L. 1983; amd. Sec. 1, Ch. 497, L. 1985; amd. Sec. 2, Ch. 57, L. 2007.

Cross-References

Notice of intention to explore, 82-1-103.
Notice of intention to drill or conduct seismic operations, 82-11-122.

82-10-504. Surface damage and disruption payments — dispute resolution — penalty for late payment. (1) (a) The surface owner and the oil and gas developer or operator shall attempt to negotiate in good faith an agreement on damages. The oil and gas developer or operator shall pay the surface owner a sum of money or other compensation equal to the amount of damages sustained by the surface owner for loss of agricultural production and income, lost land value, and lost value of improvements caused by oil and gas operations.

(b) The amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer or operator. When determining damages, consideration must be given to the period of time during which the loss occurs.

(c) At any time during the negotiation, at the request of either party and upon mutual agreement, the surface owner and the oil and gas developer or operator may enter into a dispute resolution process, including mediation.

(d) The surface owner may elect to receive annual damage payments over a period of time, except that the surface owner must be compensated by a single sum payment for harm caused by exploration only.

(e) The payments under this subsection (1) may cover only land directly affected by oil and gas operations and production. Payments under this subsection (1) are intended to compensate the surface owner for damage and disruption. A person may not reserve or assign damage and disruption compensation apart from the surface estate except to a tenant of the surface estate.

(2) An oil and gas developer or operator who fails to timely pay an installment under any annual damage agreement negotiated with a surface owner is liable for payment to the surface owner of twice the amount of the unpaid installment if the installment payment is not paid within 60 days of receipt of notice of failure to pay from the surface owner.

History: En. Sec. 4, Ch. 199, L. 1981; amd. Sec. 2, Ch. 497, L. 1985; (2)En. Sec. 3, Ch. 497, L. 1985; amd. Sec. 3, Ch. 57, L. 2007; amd. Sec. 2, Ch. 345, L. 2013.

Cross-References

Measure of damages, Title 27, ch. 1, part 3.
Geophysical exploration, Title 82, ch. 1, part 1.

82-10-505. Liability for damages to property. The oil and gas developer or operator is responsible for all damages to real or personal property resulting from the lack of ordinary care by the oil and gas developer or operator. The oil and gas developer or operator is responsible for damages to real or personal property caused by oil and gas operations and production.

History: En. Sec. 5, Ch. 199, L. 1981; amd. Sec. 4, Ch. 57, L. 2007.

Cross-References

Measure of damages, Title 27, ch. 1, part 3.

82-10-506. Notification of injury. To receive compensation under this part, a surface owner shall give written notice to the oil and gas developer or operator of the damages sustained by the surface owner within 2 years after the injury occurs or would become apparent to a reasonable person.

History: En. Sec. 6, Ch. 199, L. 1981; amd. Sec. 2738, Ch. 56, L. 2009.

82-10-507. Agreement — offer of settlement. Unless both parties provide otherwise by written agreement, within 60 days after the oil and gas developer or operator receives notice of damages pursuant to 82-10-506, the developer or operator shall make a written offer of settlement to the person seeking compensation for the damages. The surface owner seeking compensation may accept or reject any offer.

History: En. Sec. 7, Ch. 199, L. 1981; amd. Sec. 2739, Ch. 56, L. 2009.

82-10-508. Rejection — legal action. If the person seeking compensation receives a written rejection, rejects the offer of the oil and gas developer or operator, or receives no reply, that person may bring an action for compensation in the district court of the county in which the damage was sustained.

History: En. Sec. 8, Ch. 199, L. 1981.

Cross-References

Measure of damages, Title 27, ch. 1, part 3.

82-10-509 reserved.

82-10-510. Penalty for notice violation. Failure to comply with the notice requirements of 82-10-503 subjects the oil and gas developer or operator to the provisions of 82-11-122 and 82-11-147 through 82-11-149.

History: En. Sec. 5, Ch. 57, L. 2007.

82-10-511. Remedies cumulative. The remedies provided by this part do not preclude any person from seeking other remedies allowed by law.

History: En. Sec. 9, Ch. 199, L. 1981.

Cross-References

Availability of remedies, Title 27, ch. 1.

Part 6
Disclosure of Fracturing Fluids

82-10-601. Legislative findings — purpose. The purpose of this part is to provide a fair process for disclosure of fracturing fluids to facilitate transparency, while protecting valuable trade secrets and allowing well owners, operators, and service companies to protect their right to obtain an advantage over competitors.

History: En. Sec. 1, Ch. 316, L. 2017.

82-10-602. Definitions. For the purposes of this part, the following definitions apply:

(1) "Administrator" means the administrator of the division of oil and gas conservation.

(2) "Fracturing" means the introduction of fluid that may carry in suspension a propping agent under pressure into a formation containing oil or gas for the purpose of creating cracks in the formation to serve as channels for fluids to move to or from the well bore.

(3) "Systems approach" means the reporting of the identity of chemicals separately from the additive products they go into or the reporting of fracturing chemicals without attribution to the specific products in the fracturing fluid.

History: En. Sec. 2(4), Ch. 316, L. 2017.

82-10-603. Fracturing fluid disclosure — requirements. (1) The board of oil and gas conservation shall require the disclosure of fracturing fluids in accordance with 82-10-604 and this section.

(2) The fracturing fluid disclosure required by subsection (1) must include:

(a) except as provided in 82-10-604, the chemical compound name and the chemical abstracts service registry number of the ingredients, including any hazardous component listed on a material safety data sheet as defined in 50-78-102, the product name, and the type of additives used; and

(b) the proposed rate or concentration for each ingredient or additive, which may be expressed as percent by weight, percent by volume, parts per million, or parts per billion.

(3) Except as provided in 82-10-604(4)(b), the administrator shall post the information submitted pursuant to subsection (2) to the board of oil and gas conservation's website or to a website established for education and disclosure of fracturing fluids hosted by a nonprofit organization dedicated to ground water protection with members consisting of state ground water regulatory agencies, the interstate oil and gas compact commission, or both or their successors.

History: En. Sec. 2(1)-(3), Ch. 316, L. 2017.

82-10-604. Confidentiality request for trade secrets. (1) (a) If the owner or operator or service company providing fracturing services for a well believes that disclosing the complete composition of the fracturing fluid, including a specific ingredient's identity, concentrations, or both required in accordance with 82-10-603(2), will, if disclosed, reveal information entitled to protection as trade secrets as defined in 30-14-402 that should be exempt from public disclosure, the owner, operator, or service company may request that the administrator withhold the information.

(b) When an owner, operator, or service company requests that information be withheld, the department shall charge a fee of no more than $25 per ingredient or concentration for the request.

(2) To meet the requirement of subsection (1), the owner, operator, or service company shall provide the administrator with information demonstrating all of the following:

(a) that the ingredient identity, concentrations, or both, as appropriate, have not appeared in a public source or been publicly disclosed:

(i) pursuant to a federal or state law or regulation;

(ii) in a professional trade publication; or

(iii) through any other media or publication available to the public or competing oil and gas owners, operators, or service companies;

(b) to what extent the identity of the ingredient, its concentrations, or both, as appropriate, are known within a company and how the information is housed in the company and what steps employees, officers, agents, and directors take to prevent disclosure of the information;

(c) whether any other federal or state entity has determined that the ingredient identity, concentrations, or both, as appropriate, are not entitled to protection from public disclosure. A copy of the regulatory entity's determination, along with any explanation as to why the administrator should not make a similar determination, must be provided. Any information concerning prior requests for confidentiality that an owner, operator, or service company determines to be relevant also must be provided to the administrator;

(d) how the identity of the ingredient, its concentrations, or both, as appropriate, are commercially valuable to the owner, operator, or service company. A description of why the use of the ingredient, its concentrations, or both, as appropriate, is not common knowledge in the industry, including any novel or unusual aspects about the ingredient, must be provided.

(e) the ease or difficulty with which the complete composition of the fracturing fluid, including the ingredient identity, concentrations, or both, as appropriate, could be determined because of public disclosure. The information must explain why a systems approach format would not adequately protect a proprietary interest.

(3) An owner, operator, or service company shall provide the administrator with a description of the investigation completed by the owner, operator, or service company to meet the requirements of subsection (2).

(4) (a) Within 5 days of receiving the information provided in accordance with subsection (2), the administrator shall determine whether an owner, operator, or service company must disclose the ingredient identity, concentrations, or both, as appropriate.

(b) If the administrator determines disclosure of the ingredient identity, concentrations, or both, as appropriate, is not required, the administrator shall:

(i) post the information required in accordance with 82-10-603 to the board of oil and gas conservation's website or to a website hosted by a nonprofit organization dedicated to ground water protection with members consisting of state ground water regulatory agencies, the interstate oil and gas compact commission, or both or their successors and redact the specific information about the ingredient identity, concentrations, or both, as appropriate, that the administrator has determined may be withheld from public disclosure in accordance with this section;

(ii) make available to the public the chemical family name in lieu of a specific chemical compound name and number for any ingredient, concentration, or both, as appropriate, that is being withheld; and

(iii) maintain the unredacted version of the information in the board of oil and gas conservation's confidential files.

(5) If the administrator makes a determination in accordance with subsection (4)(b) that information must be withheld from public disclosure, the owner, operator, or service company shall every 3 years update the information required in accordance with subsection (2) to confirm that the ingredient identity, concentrations, or both, as appropriate, have not been disclosed to the public in another forum.

(6) If an owner, operator, or service company disagrees with a determination by the administrator in accordance with subsections (1) through (5) that certain material will not be maintained as confidential, the owner, operator, or service company may file a declaratory judgment action in a court of competent jurisdiction to establish the existence of a trade secret if the owner, operator, or service company wishes the information to enjoy confidential status. The board must be served in the action and may intervene as a party. Information submitted to the board or administrator by an owner, operator, or service company and contested in accordance with this subsection may only be publicly disclosed after a determination is made by a court of competent jurisdiction. Information submitted in accordance with 82-10-603 must be treated in accordance with this part.

History: En. Sec. 3, Ch. 316, L. 2017.

CHAPTER 11

OIL AND GAS CONSERVATION

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Part 1
Regulation by Board of Oil and Gas Conservation

82-11-101. *(Temporary)* **Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the administrator of the division of oil and gas conservation.

(2) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(3) "Class II injection well" means a well, as defined by the federal environmental protection agency or any successor agency, that injects fluids:

(a) that have been brought to the surface in connection with oil or natural gas production;

(b) for purposes of enhancing the ultimate recovery of oil or natural gas; or

(c) for purposes of storing liquid hydrocarbons.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(5) "Determinations" means those decisions delegated to the state by or under authority of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.

(6) "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool; such artificial means or application includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of energy as is contemplated in secondary recovery and tertiary programs but does not include the injection in a well of a substance or form of energy for the sole purpose of aiding in the lifting of fluids in the well or stimulating of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

(7) "Field" means the general area underlaid by one or more pools.

(8) "Fluid" means any material or substance that flows or moves, whether in a semisolid, liquid, sludge, gas, or any other form or state.

(9) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas the person produces from a pool either for the person or others or for the person and others, and the term includes all persons holding that authority by or through the person with the right to drill.

(10) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any agency or instrumentality of the state or any governmental subdivision of the state.

(11) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters that exceeds that permitted by state water quality standards or standards adopted by the board, including but not limited to the disposal, discharge, seepage, drainage, infiltration, flow, or injection of any liquid, gaseous, solid, or other substance into any state waters that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A disposal, discharge, seepage, drainage, infiltration, flow, or injection of fluid that is authorized under a rule, permit, or order of the board is not pollution under this chapter.

(12) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this chapter.

(13) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

(14) "Responsible person" means a person who is determined by the board under 82-10-402 to have abandoned an oil or gas well, injection well, disposal well, water source well, drill site, sump, seismographic shot hole, or other area where oil and gas drilling and production operations were conducted.

(15) "State waters" means any body of water, either surface or underground.

(16) (a) "Waste" means:

(i) physical waste, as that term is generally understood in the oil and gas industry;

(ii) the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy;

(iii) the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and

(iv) the inefficient storing of oil or gas. (The production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board, is not waste within the meaning of this definition.)

(b) The loss of gas to the atmosphere during coal mining operations is not waste within the meaning of this definition.

82-11-101. *(Effective on occurrence of contingency)* **Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the administrator of the division of oil and gas conservation.

(2) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(3) "Carbon dioxide" means carbon dioxide produced by anthropogenic sources that is of such purity and quality that it will not compromise the safety of a geologic storage reservoir and will not compromise those properties of a geologic storage reservoir that allow the reservoir to effectively enclose and contain a stored gas.

(4) (a) "Carbon dioxide injection well" means a well that injects carbon dioxide for the underground storage of carbon dioxide in a geologic storage reservoir.

(b) The term does not include a class II injection well in which carbon dioxide is injected for the purpose of enhancing the recovery of oil and gas.

(5) "Class II injection well" means a well, as defined by the federal environmental protection agency or any successor agency, that injects fluids:

(a) that have been brought to the surface in connection with oil or natural gas production;

(b) for purposes of enhancing the ultimate recovery of oil or natural gas; or

(c) for purposes of storing liquid hydrocarbons.

(6) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(7) "Determinations" means those decisions delegated to the state by or under authority of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.

(8) "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool; artificial means or application includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of energy as is contemplated in secondary recovery and tertiary programs but does not include the injection in a well of a substance or form of energy for the sole purpose of aiding in the lifting of fluids in the well or stimulating of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

(9) "Field" means the general area underlaid by one or more pools.

(10) "Fluid" means any material or substance that flows or moves, whether in a semisolid, liquid, sludge, gas, or any other form or state.

(11) "Geologic storage operator" means a person holding or applying for a carbon dioxide injection well permit.

(12) (a) "Geologic storage reservoir" means a subsurface sedimentary stratum, formation, aquifer, cavity, or void, whether natural or artificially created, including vacant or filled reservoirs, saline formations, and coal seams suitable for or capable of being made suitable for injecting and storing carbon dioxide.

(b) The term does not include a natural gas storage reservoir. However, the owner of a natural gas storage reservoir may convert a depleted natural gas storage reservoir into a geologic storage reservoir to be used pursuant to Title 82, chapter 11, parts 1 and 2.

(13) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas the person produces from a pool either for the person or others or for the person and others, and the term includes all persons holding that authority by or through the person with the right to drill.

(14) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any agency or instrumentality of the state or any governmental subdivision of the state.

(15) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters that exceeds that permitted by state water quality standards or standards adopted by the board, including but not limited to the disposal, discharge, seepage, drainage, infiltration, flow, or injection of any liquid, gaseous, solid, or other substance into any state waters that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A disposal, discharge, seepage, drainage, infiltration, flow, or injection of fluid that is authorized under a rule, permit, or order of the board is not pollution under this chapter.

(16) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both. Each zone of a structure that is completely separated from any other zone in the same structure is a pool. For the purposes of unitization pursuant to Title 82, chapter 11, part 2, "pool" also includes an underground reservoir for the long-term storage of carbon dioxide after the effective date of this section.

(17) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

(18) "Responsible person" means a person who is determined by the board under 82-10-402 to have abandoned an oil or gas well, injection well, disposal well, water source well, drill site, sump, seismographic shot hole, or other area where oil and gas drilling and production operations were conducted.

(19) "State waters" means any body of water, either surface or underground.

(20) "Verification and monitoring" means measuring the amount of carbon dioxide stored at a specific geologic storage reservoir, checking the site for leaks or deterioration of storage integrity, and ensuring that carbon dioxide is stored in a way that is permanent and not harmful to the ecosystem. The term includes:

(a) using models to show, before injection is allowed, that injected carbon dioxide will be securely stored. Modeling includes but is not limited to consideration of seismic activity, possible paths for fugitive emissions, and chemical reactions in the geologic formation.

(b) tracking plume behavior after injection of carbon dioxide, including the use of pressure monitoring; and

(c) establishing a system of leak monitors.

(21) (a) "Waste" means:

(i) physical waste, as that term is generally understood in the oil and gas industry;

(ii) the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy;

(iii) the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner that causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or that causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and

(iv) the inefficient storing of oil or gas.

(b) (i) The production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board, is not waste within the meaning of subsection (21)(a).

(ii) The loss of gas to the atmosphere during coal mining operations is not waste within the meaning of subsection (21)(a).

History: En. Sec. 3, Ch. 238, L. 1953; amd. Sec. 55, Ch. 253, L. 1974; amd. Sec. 1, Ch. 336, L. 1977; R.C.M. 1947, 60-126(part); amd. Sec. 1, Ch. 19, L. 1979; amd. Sec. 5, Ch. 239, L. 1983; amd. Sec. 1, Ch. 503, L. 1987; amd. Sec. 10, Ch. 530, L. 1989; amd. Sec. 1, Ch. 734, L. 1991; amd. Sec. 3, Ch. 379, L. 1993; amd. Sec. 12, Ch. 474, L. 2009.

Compiler's Comments

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

82-11-102. Oil or gas wells not public utilities. Nothing in this chapter shall in any manner be construed as constituting or attempting to constitute oil or gas wells as a public utility or utilities.

History: En. Sec. 20, Ch. 238, L. 1953; amd. Sec. 79, Ch. 253, L. 1974; R.C.M. 1947, 60-143.

82-11-103. Lands subject to law. This chapter applies to all lands in the state lawfully subject to its police powers, including all state-owned lands. It applies to lands of the United States or to lands subject to the jurisdiction of the United States only to the extent that control and supervision of conservation of oil and gas by the United States on its lands fails to effect the intent and purposes of this chapter and otherwise applies to those lands to the extent that any officer of the United States having jurisdiction or the officer's duly authorized representative approves any of the provisions of this chapter or an order of the board that affects those lands. This chapter also applies to any lands committed to a unit agreement approved by the secretary of the interior or the secretary's duly authorized representative, except that the board may, with respect to those unit agreements, suspend the application of this chapter or any part of this chapter so long as the conservation of oil and gas and the prevention of waste as provided in this chapter is accomplished under the unit agreements. The suspension does not relieve an operator or owner from making reports that may be required by the board with respect to operations and production under the unit agreement, and the suspension does not relieve an operator or owner from the payment of taxes on oil and gas production or payment for permit fees as required by this chapter.

History: En. Sec. 17, Ch. 238, L. 1953; amd. Sec. 76, Ch. 253, L. 1974; R.C.M. 1947, 60-140; amd. Sec. 2, Ch. 734, L. 1991; amd. Sec. 2740, Ch. 56, L. 2009.

Cross-References

Sovereignty and jurisdiction of state, 2-1-102.

Jurisdiction over federal enclaves, 2-1-202.

82-11-104. *(Temporary)* **Construction — no conflict with board of land commissioners' authority.** No provision of this chapter may be construed to conflict with 77-3-430, granting the board of land commissioners the authority to enter into pooling and unitization agreements for the production of oil or gas with others, provided that state lands are subject to the provisions of this chapter concerning spacing and statutory pooling and unitization in the absence of voluntary pooling and unitization agreements.

82-11-104. *(Effective on occurrence of contingency)* **Construction — no conflict with board of land commissioners' authority.** This chapter may not be construed to conflict with 77-3-430, granting the board of land commissioners the authority to enter into pooling and unitization agreements for the storage of carbon dioxide in a geologic storage reservoir or the production of oil or gas with others, provided that state lands are subject to the provisions of this chapter concerning spacing and statutory pooling and unitization in the absence of voluntary pooling and unitization agreements.

History: En. Sec. 3, Ch. 238, L. 1953; amd. Sec. 55, Ch. 253, L. 1974; amd. Sec. 1, Ch. 336, L. 1977; R.C.M. 1947, 60-126(part); amd. Sec. 3, Ch. 734, L. 1991; amd. Sec. 13, Ch. 474, L. 2009.

Compiler's Comments

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

82-11-105 through 82-11-109 reserved.

82-11-110. Oil and gas education and research account. There is an oil and gas education and research account within the state special revenue fund established in 17-2-102. Interest or other income earned on money in the oil and gas education and research account accrues to that account.

History: En. Sec. 2, Ch. 329, L. 2009.

82-11-111. *(Temporary)* **Powers and duties of board.** (1) The board shall make investigations that it considers proper to determine whether waste exists or is imminent or whether other facts exist that justify any action by the board under the authority granted by this chapter.

(2) Subject to the administrative control of the department under 2-15-121, the board shall:

(a) require measures to be taken to prevent contamination of or damage to surrounding land or underground strata caused by drilling operations and production, including but not limited to regulating the disposal or injection of water and disposal of oil field wastes;

(b) classify wells as oil or gas wells or class II injection wells for purposes material to the interpretation or enforcement of this chapter;

(c) adopt and enforce rules and orders to implement this chapter; and

(d) adopt and enforce rules and orders to implement the provisions of 85-2-510, including the establishment of a fee for petitioners seeking a hearing.

(3) The board shall determine and prescribe which producing wells are defined as "stripper wells" and which wells are defined as "wildcat wells" and make orders that in its judgment are required to protect those wells and provide that stripper wells may be produced to capacity if that is considered necessary in the interest of conservation.

(4) With respect to any pool from which gas was being produced by a gas well on or prior to April 1, 1953, this chapter does not authorize the board to limit or restrain the rate, daily or otherwise, of production of gas from that pool by any existing well or a well drilled after that date and producing from that pool to less than the rate at which the well can be produced without adversely affecting the quantity of gas ultimately recoverable by the well.

(5) The board has exclusive jurisdiction over all class II injection wells and all pits and ponds in relation to those injection wells. The board may:

(a) issue, suspend, revoke, modify, or deny permits to operate class II injection wells consistent with rules made by it;

(b) examine plans and other information needed to determine whether a permit should be issued or require changes in plans as a condition to the issuance of a permit;

(c) clearly specify in a permit any limitations imposed as to the volume and characteristics of the fluids to be injected and the operation of the well;

(d) authorize its staff to enter upon any public or private property at reasonable times to:

(i) investigate conditions relating to violations of permit conditions;

(ii) have access to and copy records required under this chapter;

(iii) inspect monitoring equipment or methods; and

(iv) sample fluids that the operator is required to sample; and

(e) adopt standards for the design, construction, testing, and operation of class II injection wells.

(6) The board shall determine, for the purposes of using the oil and gas production damage mitigation account established in 82-11-161:

(a) when the person responsible for an abandoned well, sump, or hole cannot be identified or located or, if the person is identified or located, when the person does not have sufficient financial resources to properly plug the well, sump, or hole; or

(b) when a previously abandoned well, sump, or hole is the cause of potential environmental problems and no responsible party can be identified or located or, if a responsible party can be identified and located, when the person does not have sufficient financial resources to correct the problems.

(7) The board may take measures to demonstrate to the general public the importance of the state's oil and gas exploration and production industry, to encourage and promote the wise and efficient use of energy, to promote environmentally sound exploration and production methods and technologies, to develop the state's oil and gas resources, and to support research and educational activities concerning the oil and natural gas exploration and production industry. The board may:

(a) make grants or loans and provide other forms of financial assistance as necessary or appropriate from available funds to qualified persons for research, development, marketing, educational projects, and processes or activities directly related to the state's oil and gas exploration and production industry;

(b) enter into contracts or agreements to carry out the purposes of this subsection (7), including the authority to contract for the administration of an oil and gas research, development, marketing, and educational program;

(c) cooperate with any private, local, state, or national commission, organization, agent, or group and enter into contracts and agreements for programs benefiting the oil and gas exploration and production industry;

(d) coordinate with the Montana university system, including Montana technological university or any of its affiliated research programs;

(e) accept donations, grants, contributions, and gifts from any public or private source for deposit in the oil and gas education and research account established in 82-11-110;

(f) distribute funds from the oil and gas education and research account to carry out the provisions of this subsection (7); and

(g) make orders and rules to implement the provisions of this subsection (7).

82-11-111. *(Effective on occurrence of contingency)* **Powers and duties of board.** (1) The board shall investigate matters it considers proper to determine whether waste exists or is imminent or whether other facts exist that justify any action by the board under the authority granted by this chapter.

(2) Subject to the administrative control of the department under 2-15-121, the board shall:

(a) require measures to be taken to prevent contamination of or damage to surrounding land or underground strata caused by drilling operations and production, including but not limited to regulating the disposal or injection of water or carbon dioxide and disposal of oil field wastes;

(b) classify wells as oil or gas wells, carbon dioxide injection wells, or class II injection wells for purposes material to the interpretation or enforcement of this chapter;

(c) adopt and enforce rules and orders to implement this chapter; and

(d) adopt and enforce rules and orders to implement the provisions of 85-2-510, including the establishment of a fee for petitioners seeking a hearing.

(3) The board shall determine and prescribe which producing wells are defined as "stripper wells" and which wells are defined as "wildcat wells" and make orders that in its judgment are required to protect those wells and provide that stripper wells may be produced to capacity if that is considered necessary in the interest of conservation.

(4) With respect to any pool with gas being produced by a gas well on or prior to April 1, 1953, this chapter does not authorize the board to limit or restrain the rate, daily or otherwise, of production of gas from that pool by any existing well or a well drilled after that date and producing from that pool to less than the rate at which the well can be produced without adversely affecting the quantity of gas ultimately recoverable by the well.

(5) Subject to subsection (8), the board has exclusive jurisdiction over carbon dioxide injection wells, geologic storage reservoirs, all class II injection wells, and all pits and ponds in relation to those injection wells. The board may:

(a) issue, suspend, revoke, modify, or deny permits to operate carbon dioxide injection wells and class II injection wells, consistent with rules made by it and pursuant to 82-11-123. If a permit for a carbon dioxide injection well is revoked, an operator may not seek a refund of application or permitting fees or fees paid pursuant to 82-11-181 or 82-11-184(2)(b).

(b) examine plans and other information needed to determine whether a permit should be issued or require changes in plans as a condition to the issuance of a permit;

(c) clearly specify in a permit any limitations imposed as to the volume and characteristics of the fluids to be injected and the operation of the well;

(d) authorize its staff to enter upon any public or private property at reasonable times to:

(i) investigate conditions relating to violations of permit conditions;

(ii) have access to and copy records required under this chapter;

(iii) inspect monitoring equipment or methods; and

(iv) sample fluids that the operator or geologic storage operator is required to sample; and

(e) adopt standards for the design, construction, testing, and operation of carbon dioxide injection wells and class II injection wells.

(6) The board shall determine, for the purposes of using the oil and gas production damage mitigation account established in 82-11-161 or the geologic storage reservoir program account established in 82-11-181:

(a) when the person responsible for an abandoned well, sump, or hole cannot be identified or located or, if the person is identified or located, when the person does not have sufficient financial resources to properly plug the well, sump, or hole; or

(b) when a previously abandoned well, sump, or hole is the cause of potential environmental problems and a responsible party cannot be identified or located or, if a responsible party can be identified and located, when the person does not have sufficient financial resources to correct the problems.

(7) The board may take measures to demonstrate to the general public the importance of the state's oil and gas exploration and production industry, to encourage and promote the wise and efficient use of energy, to promote environmentally sound exploration and production methods and technologies, to develop the state's oil and gas resources, and to support research and educational activities concerning the oil and natural gas exploration and production industry. The board may:

(a) make grants or loans and provide other forms of financial assistance as necessary or appropriate from available funds to qualified persons for research, development, marketing, educational projects, and processes or activities directly related to the state's oil and gas exploration and production industry;

(b) enter into contracts or agreements to carry out the purposes of this subsection (7), including the authority to contract for the administration of an oil and gas research, development, marketing, and educational program;

(c) cooperate with any private, local, state, or national commission, organization, agent, or group and enter into contracts and agreements for programs benefiting the oil and gas exploration and production industry;

(d) coordinate with the Montana university system, including Montana technological university or any of its affiliated research programs;

(e) accept donations, grants, contributions, and gifts from any public or private source for deposit in the oil and gas education and research account established in 82-11-110;

(f) distribute funds from the oil and gas education and research account to carry out the provisions of this subsection (7); and

(g) make orders and rules to implement the provisions of this subsection (7).

(8) (a) Before holding a hearing on a proposed permit for a carbon dioxide injection well, the board shall solicit, document, consider, and address comments from the department of environmental quality on the proposal.

(b) Notwithstanding the provisions of subsection (8)(a), the board makes the final decision on issuance of a permit.

(9) Solely for the purposes of administering carbon dioxide injection wells under this part, carbon dioxide within a geologic storage reservoir is not a pollutant, a nuisance, or a hazardous or deleterious substance.

History: **En. Sec. 4, Ch. 238, L. 1953; amd. Sec. 16, Ch. 93, L. 1969; amd. Sec. 56, Ch. 253, L. 1974; amd. Sec. 1, Ch. 260, L. 1974; amd. Sec. 1, Ch. 222, L. 1975; R.C.M. 1947, 60-127(part); amd. Sec. 4, Ch. 93, L. 1983; amd. Sec. 2, Ch. 503, L. 1987; amd. Sec. 4, Ch. 530, L. 1989; amd. Sec. 1, Ch. 329, L. 2009; amd. Sec. 14, Ch. 474, L. 2009; amd. Sec. 41, Ch. 19, L. 2011; amd. Sec. 37, Ch. 3, L. 2019; amd. Sec. 1, Ch. 555, L. 2023.**

Compiler's Comments

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Administrative procedure, 82-11-141.

Jurisdiction of Board over water produced from oil and gas wells, 85-2-510.

82-11-112. Intergovernmental cooperation. Subject to the provisions of 76-2-109, the board may cooperate with any other state, interstate, or federal agency and other governmental agencies of the state to effect the objects and purposes of this chapter and expend funds reasonably necessary.

History: En. Sec. 18, Ch. 238, L. 1953; amd. Sec. 77, Ch. 253, L. 1974; R.C.M. 1947, 60-141; amd. Sec. 2, Ch. 526, L. 2021; amd. Sec. 3, Ch. 533, L. 2021.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

82-11-113. Repealed. Sec. 8, Ch. 34, L. 1997.

History: En. Sec. 2, Ch. 19, L. 1979.

82-11-114. Repealed. Sec. 8, Ch. 34, L. 1997.

History: En. Sec. 3, Ch. 19, L. 1979.

82-11-115. Repealed. Sec. 8, Ch. 34, L. 1997.

History: En. Sec. 4, Ch. 19, L. 1979.

82-11-116. Repealed. Sec. 8, Ch. 34, L. 1997.

History: En. Sec. 5, Ch. 19, L. 1979.

82-11-117. Confidentiality of records. (1) Except as provided in subsection (4), any information that is furnished to the board or the board's staff or that is obtained by either of them is a matter of public record and open to public use. Except as provided in subsection (4), information unique to the owner or operator that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by the board.

(2) If an owner, operator, or service company disagrees with a determination by the board in accordance with this section or by the administrator in accordance with Title 82, chapter 10, part 6, that certain material will not be maintained as confidential, the owner, operator, or service company may file a declaratory judgment action in a court of competent jurisdiction to establish the existence of a trade secret if the owner, operator, or service company wishes the information to enjoy confidential status. The board must be served in the action and may intervene as a party. Information submitted to the board or administrator by an owner, operator, or service company and contested in accordance with this subsection may only be publicly disclosed after a determination is made by a court of competent jurisdiction.

(3) Any information not intended to be public when submitted to the board or the board's staff must be submitted in writing and clearly marked as confidential.

(4) Information submitted in accordance with 82-10-603 must be treated in accordance with Title 82, chapter 10, part 6.

(5) Data describing physical and chemical characteristics of a liquid, gaseous, solid, or other substance injected or discharged into state waters under this chapter or Title 82, chapter 10, part 6, may not be considered confidential.

(6) The board may use any information in compiling or publishing analyses or summaries relating to water pollution if the analyses or summaries do not identify the owner or operator or reveal any information that is otherwise made confidential by this section.

History: En. Sec. 3, Ch. 503, L. 1987; amd. Sec. 2741, Ch. 56, L. 2009; amd. Sec. 5, Ch. 316, L. 2017.

82-11-118. *(Temporary)* **Fees for processing applications.** (1) The board shall establish a fee schedule to defray the expenses incurred for processing an application from an operator or producer of oil seeking approval of a new or expanded enhanced recovery project, as defined in 15-36-303. The fee must be paid by the owner or operator seeking approval of the project.

(2) The board shall, by rule, determine the amount of the fee based on the complexity of processing the application.

82-11-118. *(Effective on occurrence of contingency)* **Fees for processing applications.** (1) The board shall establish a fee schedule to defray the expenses incurred for processing an application from a geologic storage operator or an operator or producer of oil seeking approval of a new or expanded enhanced recovery project, as defined in 15-36-303. The fee must be paid by the owner, geologic storage operator, or operator seeking approval of the project.

(2) The board shall, by rule, determine the amount of the fee based on the complexity of processing the application.

History: En. Sec. 20, Ch. 9, Sp. L. November 1993; amd. Sec. 47, Ch. 451, L. 1995; amd. Sec. 15, Ch. 474, L. 2009.

Compiler's Comments

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

82-11-119 and 82-11-120 reserved.

82-11-121. Oil and gas waste prohibited. Waste of oil and gas or either of them as waste is defined in this chapter is prohibited.

History: En. Sec. 1, Ch. 238, L. 1953; Sec. 60-124, R.C.M. 1947; amd. and redes. 60-127.1 by Sec. 54, Ch. 253, L. 1974; R.C.M. 1947, 60-127.1.

82-11-122. *(Temporary)* **Notice of intention to drill or conduct seismic operations — notice to surface owner.** It is unlawful to commence the drilling of a well for oil or gas without first filing with the board written notice of intention to drill and obtaining a drilling permit as provided in 82-11-134. After the permit is issued, an oil and gas developer or operator as defined under 82-10-502 shall comply with the notice requirements of 82-10-503 before commencing drilling operations. It is unlawful to conduct seismic explorations without first giving the board a copy of the notice of intention to explore filed with the county under 82-1-103.

82-11-122. *(Effective on occurrence of contingency)* **Notice of intention to drill or conduct seismic operations — notice to surface owner.** (1) It is unlawful to commence the drilling of a well for oil or gas without first filing with the board written notice of intention to drill and obtaining a drilling permit as provided in 82-11-134. After the permit is issued, an oil and gas developer or operator as defined under 82-10-502 shall comply with the notice requirements of 82-10-503 before commencing drilling operations. It is unlawful to conduct seismic explorations without first giving the board a copy of the notice of intention to explore filed with the county under 82-1-103.

(2) It is unlawful to commence the drilling of a carbon dioxide injection well without first filing with the board written notice of intention to drill and obtaining a drilling permit. Prior to issuing the permit, the board shall provide notice of an application for a permit. The notice must be:

(a) published in a newspaper of general circulation in each county where the carbon dioxide injection well and geologic storage reservoir is located; and

(b) mailed to all surface owners, mineral claimants, mineral owners, lessees, and other owners of record of subsurface interests that are located within 1 mile of the proposed boundary of the geologic storage reservoir.

History: En. Sec. 5, Ch. 238, L. 1953; amd. Sec. 57, Ch. 253, L. 1974; amd. Sec. 2, Ch. 260, L. 1974; R.C.M. 1947, 60-128; amd. Sec. 5, Ch. 339, L. 1985; amd. Sec. 4, Ch. 497, L. 1985; amd. Sec. 16, Ch. 474, L. 2009.

Compiler's Comments

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

Cross-References

Geophysical exploration, Title 82, ch. 1, part 1.
Landowner notification of surface operations, Title 82, ch. 2, part 3.
Surface owner damage and disruption compensation, Title 82, ch. 10, part 5.

82-11-123. *(Temporary)* **Requirements for oil and gas operations.** Subject to the administrative control of the department under 2-15-121, the board shall require:

(1) identification of ownership of oil or gas wells, producing properties, and tanks;

(2) the making and filing of acceptable well logs, including bottom-hole temperatures (in order to facilitate the discovery of potential geothermal energy sources), the making and filing of reports on well locations, and the filing of directional surveys, geological sample logs, mud logs, core descriptions, and ordinary core analysis, if made; however, logs of exploratory or wildcat wells need not be filed for a period of 6 months following completion of those wells;

(3) the drilling, casing, producing, and plugging of wells and class II injection wells in a manner that prevents the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas strata, blowouts, cave-ins, seepages, and fires and the pollution of fresh water supplies by oil, gas, salt, or brackish water;

(4) the restoration of surface lands to their previous grade and productive capability after a well is plugged or a seismographic shot hole has been utilized and necessary measures to

prevent adverse hydrological effects from the well or hole, unless the surface owner agrees in writing, with the approval of the board or its representatives, to a different plan of restoration;

(5) the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well. The bond may be forfeited in its entirety by the board for failure to perform the duty to properly plug each dry or abandoned well and may not be canceled or absolved if the well fails to produce oil or gas in commercial quantities, until:

(a) the board determines the well is properly plugged and abandoned as provided in the board's rules; or

(b) the requirements of 82-11-163 are met.

(6) proper gauging or other measuring of oil and gas produced and saved to determine the quantity and quality of oil and gas;

(7) that every person who produces, transports, or stores oil or gas or injects or disposes of water in this state shall make available within this state for a period of 5 years complete and accurate records of the quantities. The records must be available for examination by the board or its employees at all reasonable times. The person shall file with the board reports as it may prescribe with respect to quantities, transportations, and storages of the oil, gas, or water.

(8) the installation, use, and maintenance of monitoring equipment or methods in the operation of class II injection wells.

82-11-123. *(Effective on occurrence of contingency)* **Requirements for oil and gas and carbon dioxide injection operations.** (1) Subject to the administrative control of the department under 2-15-121, the board shall require:

(a) identification of ownership of carbon dioxide injection wells, carbon dioxide, geologic storage reservoirs, and oil or gas wells, producing properties, and tanks;

(b) the making and filing of acceptable well logs, including bottom-hole temperatures, in order to facilitate the discovery of potential geothermal energy sources, the making and filing of reports on well locations, and the filing of directional surveys, geological sample logs, mud logs, core descriptions, and ordinary core analysis, if made. However, logs of exploratory or wildcat wells need not be filed for a period of 6 months following completion of those wells.

(c) the drilling, casing, producing, and plugging of wells, carbon dioxide injection wells, and class II injection wells in a manner that prevents the escape of carbon dioxide, oil, or gas out of one stratum into another, the intrusion of water into carbon dioxide, oil, or gas strata, blowouts, cave-ins, seepages, and fires and the pollution of fresh water supplies by carbon dioxide, oil, gas, salt, or brackish water;

(d) the restoration of surface lands to their previous grade and productive capability after a well is plugged or a seismographic shot hole has been utilized and necessary measures to prevent adverse hydrological effects from the well or hole, unless the surface owner agrees in writing, with the approval of the board or its representatives, to a different plan of restoration;

(e) except as provided in subsection (1)(f), the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well. The bond may be forfeited in its entirety by the board for failure to perform the duty to properly plug each dry or abandoned well and may not be canceled or absolved if the well fails to produce oil or gas in commercial quantities, until:

(i) the board determines the well is properly plugged and abandoned as provided in the board's rules; or

(ii) the requirements of 82-11-163 are met.

(f) the furnishing of reasonable bond or other surety for a carbon dioxide injection well, geologic storage reservoir, and the carbon dioxide stored in the reservoir with good and sufficient surety for performance of the duty to operate and manage a carbon dioxide injection well, geologic storage reservoir, and the carbon dioxide stored in the reservoir and to properly plug and reclaim each carbon dioxide injection well. The bond or other surety may be forfeited in its entirety by the board for failure to perform the duty to properly manage and operate a well, reservoir, and stored carbon dioxide or to plug a well. Except as provided in 82-11-183(8), the bond or other surety may not be canceled or absolved.

(g) proper gauging or other measuring of oil and gas produced and saved to determine the quantity and quality of oil and gas;

(h) that every person who produces, transports, or stores oil or gas or injects or disposes of water or carbon dioxide in this state shall make available within this state for a period of 5 years complete and accurate records of the quantities. The records must be available for examination by the board or its employees at all reasonable times. The person shall file with the board reports as it may prescribe with respect to quantities, transportations, and storages of the oil, gas, carbon dioxide, or water.

(i) the installation, use, and maintenance of monitoring equipment or methods in the operation of carbon dioxide injection wells and class II injection wells.

(2) In addition to the requirements of subsection (1), the geologic carbon dioxide injection well permitting system must include:

(a) recordkeeping and reporting requirements sufficient to measure the effectiveness of carbon dioxide injection wells and geologic storage reservoirs;

(b) characterization of the injection zone and aquifers above and below the injection zone that may be affected, including applicable pressure and fluid chemistry data to describe the projected effects of injection activities;

(c) verification and monitoring at geologic storage reservoirs;

(d) mitigation of leaks, including the ability to stop the leaking of carbon dioxide and to address impacts of leaks;

(e) adequate baseline monitoring of drinking water wells within 1 mile of the perimeter of the geologic storage reservoir; and

(f) at a minimum, requirements pursuant to applicable federal regulatory standards established by:

(i) the Energy Independence and Security Act of 2007, Public Law 110-140, and subsequent acts;

(ii) the Safe Drinking Water Act, 42 U.S.C. 300f, et seq.; and

(iii) the underground injection control program, 40 CFR, parts 144 through 147.

History: En. Sec. 4, Ch. 238, L. 1953; amd. Sec. 16, Ch. 93, L. 1969; amd. Sec. 56, Ch. 253, L. 1974; amd. Sec. 1, Ch. 260, L. 1974; amd. Sec. 1, Ch. 222, L. 1975; R.C.M. 1947, 60-127(part); amd. Sec. 4, Ch. 503, L. 1987; amd. Sec. 78, Ch. 83, L. 1989; amd. Sec. 5, Ch. 530, L. 1989; amd. Sec. 1, Ch. 376, L. 1993; amd. Sec. 6, Ch. 34, L. 1997; amd. Sec. 17, Ch. 474, L. 2009.

Compiler's Comments

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

Cross-References

Geophysical exploration, Title 82, ch. 1, part 1.

82-11-124. Requirements relating to waste prevention. Subject to the administrative control of the department under 2-15-121, the board shall, for the purpose of preventing waste:

(1) regulate the drilling, producing, and plugging of wells, the shooting and chemical treatment of wells, the spacing of wells, operations voluntarily entered into to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; and

(2) fix, upon application made by any interested person after hearing, efficient gas-oil and water-oil ratios for any particular well or wells.

History: En. Sec. 4, Ch. 238, L. 1953; amd. Sec. 16, Ch. 93, L. 1969; amd. Sec. 56, Ch. 253, L. 1974; amd. Sec. 1, Ch. 260, L. 1974; amd. Sec. 1, Ch. 222, L. 1975; R.C.M. 1947, 60-127(part).

82-11-125. Availability of cores or chips, cuttings, and bottom-hole temperatures to board. (1) An owner drilling a well for gas or oil shall make available to the board at its field offices representative cores or chips, when available, the cuttings from the well, and the bottom-hole temperatures of the wells, in order to facilitate the discovery of geothermal potential. However, cores, chips, or cuttings need not be so made available for a period of 6 months following completion or abandonment of the wells. The board may, however, relieve the owner of a well of the obligation to furnish cores, chips, or cuttings when, in the opinion of the board, the furnishing thereof would be unduly burdensome for the owner; however, the owner desiring relief must apply to and receive permission from the board to not so furnish.

(2) The owner of a stratigraphic test well drilled for the purpose of obtaining lithologic information useful in potential oil and gas operations, as such well is defined by the board's

rules, shall within 3 years from the date of the cessation of the drilling of the well make available to the board complete sets of sample cuttings and representative cores or chips and well logs of the wells, which logs shall include among other information the size of casing used, the type and depth of water if any located, and bottom-hole temperatures for geothermal purposes. The board shall require and the owner of a stratigraphic test well shall furnish, prior to the commencement of drilling of the well, a good and sufficient surety bond, to be approved prior to the commencement of the drilling, conditioned upon the proper plugging of the well prior to abandonment, the amount of the bond to be determined by the estimated depth as in the board's rules provided for oil and gas wells; prior to abandonment, the wells shall be plugged by the owner thereof or by the surety should the owner be in default, the plugging to conform to the standards set down and determined by the board.

History: En. Sec. 21, Ch. 238, L. 1953; amd. Sec. 1, Ch. 224, L. 1955; amd. Sec. 1, Ch. 234, L. 1959; amd. Sec. 1, Ch. 208, L. 1973; amd. Sec. 80, Ch. 253, L. 1974; amd. Sec. 2, Ch. 222, L. 1975; R.C.M. 1947, 60-144; amd. Sec. 1, Ch. 248, L. 1983.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

82-11-126. Availability of facilities to bureau of mines. The board may make available to the authorized personnel or representatives of the bureau of mines and geology such facilities, equipment, records, and cores and cuttings or samples of cores and cuttings as are or may be required by the bureau in the furtherance of its oil and gas research and study. Bottom-hole temperatures of oil and gas wells shall be made available to the bureau of mines and geology by the board in order to facilitate the determination of possible geothermal energy sources.

History: En. Sec. 3, Ch. 32, L. 1957; amd. Sec. 82, Ch. 253, L. 1974; amd. Sec. 3, Ch. 222, L. 1975; R.C.M. 1947, 60-148.

Cross-References

Establishment of Bureau of Mines and Geology, 20-25-211.
Bureau of Mines and Geology — purpose, 20-25-212.
Bureau Director and assistants, 20-25-213.

82-11-127. *(Temporary)* **Prohibited activity — Makoshika state park.** (1) A person may not:

(a) cause pollution of any state waters or place or cause to be placed any liquid, gaseous, solid, or other substance in a location where the substance is likely to cause pollution of any state waters;

(b) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained in it;

(c) violate an order issued pursuant to this chapter; or

(d) violate a provision of this chapter.

(2) A person may not drill, construct, convert, or operate a class II injection well or drill an oil or gas well or stratigraphic test well or core hole as described under 82-11-134 without a valid permit or order from the board.

(3) Except as provided in subsection (5), on lands managed as Makoshika state park, pursuant to Title 23, chapter 1, and under the control of the department of fish, wildlife, and parks, by grant, acquisition, lease, easement, or other means, a person may not:

(a) drill, construct, convert, or operate an oil or gas well, stratigraphic test well, or core hole;

(b) conduct vibroseis, drill a seismic shot hole, or set a surface charge;

(c) explore for oil or gas in a manner that damages the land surface; or

(d) construct or place any surface facility associated with oil or gas exploration or development.

(4) The prohibitions in subsection (3) do not preclude the development of oil or gas resources from beneath Makoshika state park through directional drilling or access from property outside the boundaries of the state park provided that the surface resources of the state park are not disturbed.

(5) The prohibitions listed in subsection (3) do not apply to oil or gas resources within Makoshika state park that are owned by a private person, nor do the prohibitions apply to school trust lands within the boundaries of the park. The state acknowledges the mineral rights of Dawson County and the state school trust and the private property rights of persons owning

private mineral rights within Makoshika state park. The department of fish, wildlife, and parks is directed to conduct negotiations with the owners of mineral rights within Makoshika state park, with the purpose of acquiring those rights in the name of the state, and to report the results of the negotiations to the legislature no later than January 8, 2001.

82-11-127. *(Effective on occurrence of contingency)* **Prohibited activity.** (1) A person may not:

(a) cause pollution of any state waters or place or cause to be placed any liquid, gaseous, solid, or other substance in a location where the substance is likely to cause pollution of any state waters;

(b) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained in it;

(c) violate an order issued pursuant to this chapter; or

(d) violate a provision of this chapter.

(2) A person may not drill, construct, convert, or operate a class II injection well or a carbon dioxide injection well or drill an oil or gas well or stratigraphic test well or core hole as described under 82-11-134 without a valid permit or order from the board.

History: En. Sec. 7, Ch. 503, L. 1987; amd. Sec. 1, Ch. 522, L. 1999; amd. Sec. 18, Ch. 474, L. 2009.

Compiler's Comments

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

82-11-128 through 82-11-130 reserved.

82-11-131. Privilege and license tax. (1) For the purpose of providing funds for defraying the expenses of the operation and enforcement of this chapter and expenses of the board, an operator or producer of oil and gas shall pay an assessment of 0.3% of the market value of each barrel of crude petroleum produced, saved and marketed, or stored within the state or exported from the state and the same rate on the market value of each 10,000 cubic feet of natural gas produced, saved and marketed, or stored within the state or exported from the state.

(2) The board shall, by rule adopted pursuant to the provisions of the Montana Administrative Procedure Act, fix a percentage of the assessment and may from time to time reduce or increase the percentage of the assessment as the expenses chargeable against the oil and gas conservation fund may require.

(3) The board shall give the department of revenue at least 90 days' notice of any change in the percentage of the rate adopted pursuant to this section.

(4) For the purposes of this section, the provisions of Title 15, chapter 36, part 3, apply to the privilege and license tax assessment.

History: En. Sec. 22, Ch. 238, L. 1953; amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, Ch. 198, L. 1957; amd. Sec. 1, Ch. 47, L. 1961; amd. Sec. 160, Ch. 147, L. 1963; amd. Sec. 1, Ch. 315, L. 1973; amd. Sec. 1, Ch. 130, L. 1974; amd. Sec. 81, Ch. 253, L. 1974; amd. Sec. 1, Ch. 413, L. 1975; amd. Sec. 1, Ch. 178, L. 1977; amd. Sec. 1, Ch. 254, L. 1977; R.C.M. 1947, 60-145(1) thru (3); amd. Sec. 7, Ch. 201, L. 1979; amd. Sec. 5, Ch. 93, L. 1983; amd. Sec. 144, Ch. 370, L. 1987; amd. Secs. 1, 2, Ch. 573, L. 1995; amd. Sec. 4, Ch. 414, L. 2019.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

82-11-132. Repealed. Sec. 50, Ch. 451, L. 1995.

History: En. Sec. 22, Ch. 238, L. 1953; amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, Ch. 198, L. 1957; amd. Sec. 1, Ch. 47, L. 1961; amd. Sec. 160, Ch. 147, L. 1963; amd. Sec. 1, Ch. 315, L. 1973; amd. Sec. 1, Ch. 130, L. 1974; amd. Sec. 81, Ch. 253, L. 1974; amd. Sec. 1, Ch. 413, L. 1975; amd. Sec. 1, Ch. 178, L. 1977; amd. Sec. 1, Ch. 254, L. 1977; R.C.M. 1947, 60-145(5); amd. Sec. 6, Ch. 93, L. 1983; amd. Sec. 2, Ch. 265, L. 1987.

82-11-133. Repealed. Sec. 50, Ch. 451, L. 1995.

History: En. Sec. 22, Ch. 238, L. 1953; amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, Ch. 198, L. 1957; amd. Sec. 1, Ch. 47, L. 1961; amd. Sec. 160, Ch. 147, L. 1963; amd. Sec. 1, Ch. 315, L. 1973; amd. Sec. 1, Ch. 130, L. 1974; amd. Sec. 81, Ch. 253, L. 1974; amd. Sec. 1, Ch. 413, L. 1975; amd. Sec. 1, Ch. 178, L. 1977; amd. Sec. 1, Ch. 254, L. 1977; R.C.M. 1947, 60-145(6); amd. Sec. 7, Ch. 93, L. 1983.

82-11-134. Permit fees. In addition to the privilege and license tax, before commencing the drilling of an oil or gas well or stratigraphic test well or core hole, a person shall secure from the board a drilling permit and shall pay to the board therefor the following amounts:

(1) for each well whose estimated depth is 3,500 feet or less, $25;

(2) from 3,501 feet to 7,000 feet, $75;

(3) 7,000 feet and deeper, $150.

History: En. Sec. 22, Ch. 238, L. 1953; amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, Ch. 198, L. 1957; amd. Sec. 1, Ch. 47, L. 1961; amd. Sec. 160, Ch. 147, L. 1963; amd. Sec. 1, Ch. 315, L. 1973; amd. Sec. 1, Ch. 130, L. 1974; amd. Sec. 81, Ch. 253, L. 1974; amd. Sec. 1, Ch. 413, L. 1975; amd. Sec. 1, Ch. 178, L. 1977; amd. Sec. 1, Ch. 254, L. 1977; R.C.M. 1947, 60-145(4).

82-11-135. Money earmarked for board expenses. The state treasurer shall deposit all money distributed to the board under 15-36-331 and collected under this chapter in the state special revenue fund. The money must first be used for the purpose of paying all expenses of the board as provided in 15-36-331(2)(a) and then allocated as provided in 15-36-331(2)(b) and (2)(c). The board shall use the money subject to biennial appropriations by the legislature. Income and interest from investment of the board's money in the state special revenue fund must be credited to the board.

History: En. Sec. 22, Ch. 238, L. 1953; amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, Ch. 198, L. 1957; amd. Sec. 1, Ch. 47, L. 1961; amd. Sec. 160, Ch. 147, L. 1963; amd. Sec. 1, Ch. 315, L. 1973; amd. Sec. 1, Ch. 130, L. 1974; amd. Sec. 81, Ch. 253, L. 1974; amd. Sec. 1, Ch. 413, L. 1975; amd. Sec. 1, Ch. 178, L. 1977; amd. Sec. 1, Ch. 254, L. 1977; R.C.M. 1947, 60-145(7); amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 265, L. 1987; amd. Sec. 35, Ch. 15, Sp. L. July 1992; amd. Sec. 48, Ch. 451, L. 1995; amd. Sec. 13, Ch. 466, L. 1997; amd. Sec. 4, Ch. 306, L. 2001; amd. Sec. 13, Ch. 522, L. 2003; amd. Sec. 12, Ch. 312, L. 2011; amd. Sec. 5, Ch. 414, L. 2019.

Cross-References

No money expended except upon appropriation, Art. VIII, sec. 14, Mont. Const.; 17-8-101.

Treasury fund structure, 17-2-102.

82-11-136. *(Temporary)* **Expenditure of funds from bonds for plugging wells.** The board may accept and expend all funds received by it from bonds for properly plugging dry or abandoned wells as authorized in 82-11-123(5).

82-11-136. *(Effective on occurrence of contingency)* **Expenditure of funds from bonds for plugging wells.** (1) The board may accept and expend all funds received by it from bonds for properly plugging dry or abandoned wells as authorized in 82-11-123(1)(e).

(2) The board may accept and expend all funds received by it from bonds for properly plugging abandoned carbon dioxide injection wells as authorized in 82-11-123(1)(f).

History: En. Sec. 4, Ch. 265, L. 1987; amd. Sec. 61, Ch. 422, L. 1997; amd. Sec. 19, Ch. 474, L. 2009.

Compiler's Comments

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

82-11-137. *(Temporary)* **Class II injection well operating fee.** (1) For the purpose of providing funds for defraying the expenses of operating and enforcing the class II injection well regulatory program, as defined by the federal environmental protection agency or any successor agency, each operator of a class II injection well may be required to pay an annual operating fee not to exceed $300 per injection well.

(2) The department shall collect the operating fee at such time as the board may prescribe by rule. All money collected under this section must be forwarded to the state treasurer for deposit in the state special revenue fund and must be used for the purpose prescribed in subsection (1).

(3) The board shall, by rule adopted pursuant to the provisions of the Montana Administrative Procedure Act, fix the amount of the fee described in subsection (1) and may from time to time reduce or increase the amount thereof as the expenses chargeable against the state special revenue fund may require. However, the assessment fixed by the board may not exceed the limits prescribed in subsection (1). The amount of the fee must be expressed in dollars.

82-11-137. *(Effective on occurrence of contingency)* **Class II injection well operating fee — carbon dioxide injection well operating fee.** (1) For the purpose of providing funds for defraying the expenses of operating and enforcing:

(a) the class II injection well regulatory program, as defined by the federal environmental protection agency or any successor agency, each operator of a class II injection well may be required to pay an annual operating fee not to exceed $300 per injection well; and

(b) the carbon dioxide injection well regulatory program, each geologic storage operator of a carbon dioxide injection well may be required to pay an annual operating fee not to exceed $5,000 per injection well.

(2) The department shall collect the operating fee at a time established by board rule. All money collected under this section must be forwarded to the state treasurer for deposit in the state special revenue fund and must be used for the purpose prescribed in subsection (1).

(3) The board shall, by rule adopted pursuant to the provisions of the Montana Administrative Procedure Act, fix the amount of the fee described in subsection (1) and may from time to time reduce or increase the amount of the fee as the expenses chargeable against the state special revenue fund may require. However, the assessment fixed by the board may not exceed the limits prescribed in subsection (1). The amount of the fee must be expressed in dollars.

History: En. Sec. 13, Ch. 503, L. 1987; amd. Sec. 20, Ch. 474, L. 2009.

Compiler's Comments

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

82-11-138. Rulemaking — microbial conversion wells. The board may adopt rules necessary to regulate well injections to restore or enhance the microbial conversion of hydrocarbon substrates to methane gas as class II injection wells.

History: En. Sec. 1, Ch. 184, L. 2011.

82-11-139 and 82-11-140 reserved.

82-11-141. Administrative procedure. (1) Unless otherwise provided, the Montana Administrative Procedure Act applies to this chapter.

(2) An order or amendment of an order, except in an emergency, may not be made by the board without a public hearing upon at least 10 days' notice. The public hearing must be held at a time and place as prescribed by the board, and any interested person is entitled to be heard.

(3) When an emergency requiring immediate action is found to exist, the board may issue an emergency order without advance notice or hearing that is effective upon promulgation. An emergency order may not remain in effect beyond the next regular meeting of the board.

(4) (a) If notice is required by the chapter and the Montana Administrative Procedure Act does not apply, the notice must be made by publication in one or more issues of a newspaper in general circulation in Helena and a newspaper of general circulation in the county where the land or some part of the land is situated, and the board may also cause publication to be made in a trade journal or bulletin of general circulation in the oil and gas industry in the state.

(b) At least 20 days prior to the public hearing, a person who applies to establish a well spacing unit under 82-11-201 or who applies to pool all interests in a well spacing unit pursuant to 82-11-202 shall cause written notice of any hearing on the application to be served upon the record owners of the oil and gas and leasehold interests sought to be spaced or pooled. Notice must be given by mailing the written notice, postage prepaid, to their addresses as shown by the record of the county clerk and recorder at the time the notice is given.

(5) If written notice is not possible, proof of service by publication under subsection (4) must be made by the affidavit of the printer or publisher of the newspaper, trade journal, or bulletin in which the notice is published or by a supervisor or principal clerk of the newspaper, bulletin, or trade journal.

(6) Except as provided otherwise in this chapter, the board may act upon its own motion or upon the petition of an interested person. On the filing of a petition concerning a matter within the jurisdiction of the board, the board shall promptly fix a date for a hearing on the petition and shall cause notice of the hearing to be given. The hearing must be held without undue delay after the filing of the petition. The board shall enter its order within 30 days after the hearing.

History: En. Sec. 9, Ch. 238, L. 1953; amd. Sec. 1, Ch. 213, L. 1961; amd. Sec. 71, Ch. 253, L. 1974; R.C.M. 1947, 60-132; amd. Sec. 6, Ch. 19, L. 1979; amd. Sec. 1, Ch. 238, L. 1987; amd. Sec. 5, Ch. 503, L. 1987; amd. Sec. 2742, Ch. 56, L. 2009.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

82-11-142. Subpoena power — civil actions. (1) If the Montana Administrative Procedure Act does not apply, the board may subpoena witnesses, administer oaths, and require the production of records, books, and documents for examination at any hearing or investigation conducted by it. Witnesses subpoenaed under this subsection must be paid the same per diem and mileage as is provided to be paid to witnesses attending the district courts of this state.

(2) This chapter, a suit by or against the board, a violation charged or asserted against a person under this chapter, or a rule or order issued under this chapter does not impair, abridge, or delay a cause of action for damages or other civil remedy that a person may have or assert against a person violating this chapter or a rule or order issued under it. A person aggrieved by the violation may sue for and recover damages or relief that the person otherwise may be entitled to receive.

(3) A person, association, corporation, or agency of the state or federal government may apply to the board protesting a violation or a threatened violation of this chapter. The board shall make an investigation and make a written report to the person, association, corporation, or agency that made the protest. If a violation is established by the investigation of the board, the board shall take appropriate enforcement action. If the board fails to take appropriate enforcement action or to bring suit to enjoin a threatened violation of this chapter or a rule or order of the board within 10 days after receipt of written request to do so by a person who is or will be adversely affected, the person making the request may bring the suit in the person's own behalf to restrain the threatened violation in a court in which the board might have brought suit. The board must be made a party defendant in the suit in addition to the person threatening to violate this chapter or a rule or order of the board, and the action must proceed and injunctive relief may be granted without bond in the same manner as if suit had been brought by the board.

(4) If a person fails or refuses to comply with the subpoena issued by the board or if a witness refuses to testify as to any material matter regarding which the person may be interrogated, any district court in the state, upon good cause shown by the application of the board, may issue a warrant of attachment for the person and, if after hearing the court finds the person's failure or refusal to be unjustified, compel the person to comply with the subpoena and to attend before the board and produce any subpoenaed records, books, and documents for examination and to give testimony. The court may punish for contempt as in the case of disobedience to a like subpoena issued by the court or for refusal to testify in the proceeding.

History: En. Sec. 10, Ch. 238, L. 1953; amd. Sec. 72, Ch. 253, L. 1974; R.C.M. 1947, 60-133; amd. Sec. 6, Ch. 503, L. 1987; amd. Sec. 2743, Ch. 56, L. 2009.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.
Mileage allowance for witnesses, 2-18-503.
What acts or omissions are contempts, 3-1-501.
Duties of District Court Clerk relating to jurors and witnesses, 3-5-510.
Procedure in reference to witnesses' warrants, 3-5-511.
Statement to Board of County Commissioners concerning witnesses, 3-5-512.
Subpoenas, Title 26, ch. 2, part 1.
Witness fees in courts of record and before certain court officers, 26-2-501.
Injunctions, Title 27, ch. 19.
Mandamus, Title 27, ch. 26.

82-11-143. Rehearing. A person adversely affected by a rule or order of the board may within 20 days after its effective date apply to the board in writing for a rehearing. The application for rehearing must be acted upon at the board's next regularly scheduled meeting after filing of the application, and if granted, the rehearing must be held without undue delay.

History: En. Sec. 11, Ch. 238, L. 1953; amd. Sec. 73, Ch. 253, L. 1974; R.C.M. 1947, 60-134; amd. Sec. 1, Ch. 363, L. 1991.

82-11-144. Court review. Any interested person adversely affected by any provision of this chapter or by any rule or order adopted by the board hereunder or by any act done or threatened thereunder may obtain court review and seek relief by a suit for an injunction against the board as defendant, which suit may be instituted in the district court of the county where the board keeps its principal office or in the district court of any county wherein the land involved or any part thereof is situated. The term "interested person", as used herein, shall be interpreted broadly and liberally, especially where the suit involves the right to drill a well or involves some other act which clearly affects the plaintiff even though the effect is indirect. If the act complained of involves a general order for a pool or the right to drill a well therein, a person who owns or has an interest in a well in the pool, which well is capable of producing oil or gas, shall be considered to be prima facie an interested person. The suit shall be given a preferential setting and shall be tried de novo and disposed of as an ordinary civil suit and not upon the record of any hearing before the board. The statute, rule, order, or decision involved in the suit shall be prima facie valid; however, the finding of fact, actual or presumed, made by the board in support of the rule, order, or decision involved in the suit is not binding on the court though supported by evidence introduced at a hearing before the board. The court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any board action. The court shall:

(1) compel board action unlawfully withheld or unreasonably delayed;

(2) hold unlawful and set aside board action, findings, and conclusions found to be:

(a) arbitrary, unreasonable, capricious, and abuse of discretion or otherwise not in accordance with law;

(b) contrary to constitutional right, power, privilege, or immunity;

(c) in excess of statutory jurisdiction, authority, or limitations or short of statutory right;

(d) without observance of procedure required by law; or

(e) unwarranted by the facts; and

(3) consider all the evidence, pass on the credibility of witnesses and the weight to be given their testimony, and resolve such fact issues as may be necessary for decision in the case.

History: En. Sec. 12, Ch. 238, L. 1953; amd. Sec. 74, Ch. 253, L. 1974; R.C.M. 1947, 60-135(1).

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

82-11-145. Injunction or restraining order. (1) A temporary restraining order or temporary injunction of any kind may not be granted against the board and its members or against the attorney general or against an employee of the board, restraining the board and its members or employees or the attorney general from enforcing this chapter or any rule or order made thereunder, until it is shown to the satisfaction of the court that the act done or threatened is probably without sanction of the law or that the provisions of this chapter or the rule or order complained of is probably invalid or unreasonable and that, if enforced against the complaining party, will probably cause an irreparable injury.

(2) With respect to an order or decree granting temporary injunctive relief, the nature and extent of the probable invalidity of the statute or of any provision of this chapter or of a rule or order thereunder involved in the suit must be recited in the order or decree granting the temporary relief, as well as a clear statement of the probable damage relied upon by the court as justifying temporary injunctive relief.

(3) A temporary restraining order or temporary injunction of any kind against the board or its members or its employees or the attorney general may not be effective until the plaintiff executes a bond with sufficient sureties in such amount and upon such conditions as the court directs. The bond shall be made payable to the state of Montana, shall be approved by the judge of the court, and shall be for the use and benefit of all persons who may be injured by the acts done under the protection of the temporary restraining order or temporary injunction. A person claiming injury must bring suit within 6 months after the date of the final determination of the validity in whole or in part of the provisions of the chapter or the rule or order, the enforcement of which was enjoined; otherwise the right to bring such suit is forever barred.

History: En. Sec. 12, Ch. 238, L. 1953; amd. Sec. 74, Ch. 253, L. 1974; R.C.M. 1947, 60-135(2), (3).

Cross-References

Immunity of governmental entities from actions for damages, 2-9-105 through 2-9-113.

Injunctions, Title 27, ch. 19.

82-11-146. Appeal. An appeal to the supreme court may be taken from any final judgment, decree, or order in the action, as provided in the Montana Rules of Appellate Procedure.

History: En. Sec. 12, Ch. 238, L. 1953; amd. Sec. 74, Ch. 253, L. 1974; R.C.M. 1947, 60-135(4).

82-11-147. Violations. (1) Notwithstanding any other provisions of this chapter, if the board finds upon receipt of evidence:

(a) that a person is violating or threatening to violate this chapter or a rule or order of the board, the board may bring suit against that person in the district court of any county where the violation occurs or is threatened to restrain the person from continuing the violation or from carrying out the threat of violation; or

(b) that a person is violating this chapter or a rule or order of the board in a manner for which the board is authorized to institute proceedings pursuant to 82-11-149, the board may issue an order either assessing a civil penalty in the amount prescribed in 82-11-149, up to a maximum administrative penalty of $125,000, or requiring compliance with this chapter or a rule or order, or both.

(2) In a suit under subsection (1)(a), the court may grant to the board, without bond or other undertaking, such prohibitory and mandatory injunctions as the facts may warrant, including temporary restraining orders.

History: En. Sec. 13, Ch. 238, L. 1953; amd. Sec. 75, Ch. 253, L. 1974; R.C.M. 1947, 60-136; amd. Sec. 10, Ch. 503, L. 1987.

Cross-References

Injunctions, Title 27, ch. 19.

82-11-148. Criminal penalties. A person is guilty of a misdemeanor and shall be subject to a fine of not more than $10,000 per day of violation or imprisonment in a county jail for a term not exceeding 6 months or to both the fine and imprisonment if that person willfully violates any lawful rule or order of the board or if that person, for the purpose of evading this chapter or any rule or order of the board, knowingly and willfully:

(1) makes or causes to be made a false entry or statement in a report required by this chapter or by a rule or order of the board or a false entry in a record, account, or memorandum required by this chapter or by a rule or order;

(2) omits or causes to be omitted from the record, account, or memorandum full, true, and correct entries as required by this chapter or by a rule or order; or

(3) removes from this state or destroys, mutilates, alters, or falsifies the record, account, or memorandum.

History: En. Sec. 19, Ch. 238, L. 1953; amd. Sec. 78, Ch. 253, L. 1974; R.C.M. 1947, 60-142; amd. Sec. 12, Ch. 503, L. 1987.

Cross-References

Unsworn falsification to authorities, 45-7-203.

Tampering with or fabricating physical evidence, 45-7-207.

82-11-149. Civil penalties. (1) A person is guilty of a misdemeanor and is subject to a civil penalty of at least $75 and not more than $10,000 a day for each violation if that person violates any rule or order of the board or a provision of this chapter. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

(3) The board, or the attorney general upon request of the board, shall institute and maintain any enforcement proceedings in the name of the state.

(4) Civil penalties collected pursuant to this section must be deposited in the state general fund.

History: En. Sec. 11, Ch. 503, L. 1987; amd. Sec. 2, Ch. 363, L. 1991; amd. Sec. 73, Ch. 509, L. 1995.

Cross-References

Injunctions, Title 27, ch. 19.

Misdemeanor defined, 45-2-101.

82-11-150. Legal assistance. When requested by the board, the attorney general or the county attorneys within their respective counties shall perform legal services and conduct legal proceedings necessary to carry out the purposes of this chapter. The board may also employ legal counsel to enforce this chapter and to conduct proceedings under it.

History: En. Sec. 8, Ch. 503, L. 1987.

82-11-151. Emergencies — notice and hearing. (1) Notwithstanding any other provisions of this chapter, if the administrator or a board member finds that a person is committing or about to commit an act in violation of this chapter or any order or rule issued under it that, if it occurs or continues, will cause substantial pollution, the administrator under order of the board or the board member is authorized to order the person to stop, avoid, or moderate the act, including immediate closure or shutdown of any well. This authority is limited to acts the harmful effects of which will not be remedied immediately after the commission or cessation of the act or will represent an immediate threat to public health, safety, or welfare.

(2) When any emergency requiring immediate action is found pursuant to subsection (1), the board is authorized to issue an emergency order without notice or hearing, which is effective upon issuance as provided in 82-11-141(3).

(3) The board may have written notice served, personally or by mail, on the alleged violator or the violator's agent. The notice must state the provision alleged to be violated, the facts alleged to constitute the violation, the nature of corrective action the board requires, and the time within which the action is to be taken. For the purposes of this section, service by mail is complete on the date of mailing.

(4) The notice must indicate that the order is an emergency order.

(5) Pursuant to 82-11-141(3), the board may consider the emergency order at its next regular meeting, without compliance with the notice requirements of this chapter if they cannot be accomplished within the time available, and enter a second emergency order.

(6) Upon issuing an order under subsection (2), the board may fix a place and time for a hearing, not later than 5 days after issuance unless the person to whom the order is directed requests a later time. The board may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. If the board considers it practicable, the hearing must be held in the county where the violation is alleged to have occurred. As soon as practicable after the hearing, the board shall affirm, modify, or set aside the order.

(7) If the order of the board is affirmed, it must be accompanied by a statement specifying the date or dates by which a violation must cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution. An action for review of the order of the board may be initiated in the manner specified in 82-11-144. The initiation of an action or taking of an appeal may not stay the effectiveness of the order unless the court finds that the board did not have reasonable cause to issue an order under this section.

History: **En. Sec. 9, Ch. 503, L. 1987; amd. Sec. 2744, Ch. 56, L. 2009.**

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

82-11-152 through 82-11-160 reserved.

82-11-161. *(Temporary)* **Oil and gas production damage mitigation account — statutory appropriation.** (1) There is an oil and gas production damage mitigation account within the state special revenue fund established in 17-2-102. The oil and gas production damage mitigation account is controlled by the board.

(2) (a) At the beginning of each biennium, there must be allocated to the oil and gas production damage mitigation account $650,000 from the interest income of the resource indemnity trust fund, except that if at the beginning of a biennium the unobligated cash balance in the oil and gas production damage mitigation account:

(i) equals or exceeds $1 million, no allocation will be made; or

(ii) is less than $1 million, then an amount less than or equal to the difference between the unobligated cash balance and $1 million, but not more than $650,000, must be allocated to the oil and gas production damage mitigation account from the interest income of the resource indemnity trust fund.

(b) If $650,000 is not allocated pursuant to subsection (2)(a), the remainder must be deposited in the natural resources projects state special revenue account established in 15-38-302 for the purpose of making grants.

(3) In addition to the allocation provided in subsection (2), there must be deposited in the oil and gas production damage mitigation account all funds received by the board pursuant to 15-36-331(2)(c) and 82-11-136.

(4) If a sufficient balance exists in the account, funds are statutorily appropriated, as provided in 17-7-502, from the oil and gas production damage mitigation account, upon the authorization of the board, to pay the reasonable costs of properly plugging a well and either reclaiming or restoring, or both, a drill site or other drilling or producing area damaged by oil and gas operations if the board determines that the well, sump, hole, drill site, or drilling or producing area has been abandoned and the responsible person cannot be identified or located or if the responsible person fails or refuses to properly plug, reclaim, or restore the well, sump, hole, drill site, or drilling or producing area within a reasonable time after demand by the board. The responsible person shall, however, pay costs to the extent of that person's available resources and is subsequently liable to fully reimburse the account or is subject to a lien on property as provided in 82-11-164 for costs expended from the account to properly plug, reclaim, or restore the well, sump, hole, drill site, or drilling or producing area and to mitigate any damage for which the person is responsible.

(5) Interest from funds in the oil and gas production damage mitigation account accrues to that account.

82-11-161. *(Effective on occurrence of contingency)* **Oil and gas production damage mitigation account — statutory appropriation.** (1) There is an oil and gas production damage mitigation account within the state special revenue fund established in 17-2-102. The oil and gas production damage mitigation account is controlled by the board.

(2) (a) At the beginning of each biennium, there must be allocated to the oil and gas production damage mitigation account $650,000 from the interest income of the resource indemnity trust fund, except that if at the beginning of a biennium the unobligated cash balance in the oil and gas production damage mitigation account:

(i) equals or exceeds $1 million, no allocation will be made; or

(ii) is less than $1 million, then an amount less than or equal to the difference between the unobligated cash balance and $1 million, but not more than $650,000, must be allocated to the oil and gas production damage mitigation account from the interest income of the resource indemnity trust fund.

(b) If $650,000 is not allocated pursuant to subsection (2)(a), the remainder must be deposited in the natural resources projects state special revenue account established in 15-38-302 for the purpose of making grants.

(3) In addition to the allocation provided in subsection (2), there must be deposited in the oil and gas production damage mitigation account all funds received by the board pursuant to 15-36-331(2)(c) and 82-11-136(1).

(4) If a sufficient balance exists in the account, funds are statutorily appropriated, as provided in 17-7-502, from the oil and gas production damage mitigation account, upon the authorization of the board, to pay the reasonable costs of properly plugging a well and either reclaiming or restoring, or both, a drill site or other drilling or producing area damaged by oil and gas operations if the board determines that the well, sump, hole, drill site, or drilling or producing area has been abandoned and the responsible person cannot be identified or located or if the responsible person fails or refuses to properly plug, reclaim, or restore the well, sump, hole, drill site, or drilling or producing area within a reasonable time after demand by the board. However, the responsible person shall pay costs to the extent of that person's available resources and is subsequently liable to fully reimburse the account or is subject to a lien on property as provided in 82-11-164 for costs expended from the account to properly plug, reclaim, or restore the well, sump, hole, drill site, or drilling or producing area and to mitigate any damage for which the person is responsible.

(5) Interest from funds in the oil and gas production damage mitigation account accrues to that account.

History: En. Sec. 6, Ch. 530, L. 1989; amd. Sec. 56, Ch. 112, L. 1991; amd. Sec. 4, Ch. 734, L. 1991; amd. Sec. 48, Ch. 349, L. 1993; amd. Sec. 7, Ch. 34, L. 1997; amd. Sec. 21, Ch. 474, L. 2009; amd. Sec. 2, Ch. 413, L. 2015; amd. Sec. 2, Ch. 572, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 572, L. 2025. Amendment effective July 1, 2025.

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

82-11-162. Repealed. Sec. 8, Ch. 34, L. 1997.

History: En. Sec. 7, Ch. 530, L. 1989; amd. Sec. 49, Ch. 451, L. 1995.

82-11-163. *(Temporary)* **Landowner's bond on noncommercial well.** If the owner of the surface land upon which has been drilled a well that fails to produce oil or gas in commercial quantities acquires the well for domestic purposes, the board may cancel and absolve the bond required in 82-11-123 upon its acceptance of surety in the form of a certificate of deposit or a surety bond in the amount of $5,000 for a single well or in the amount of $10,000 for more than one well or in the form of a property bond of two times the value of the required certificate of deposit or surety bond. The release of the certificate of deposit, surety bond, or property bond must be conditioned on proof provided by the landowner that the well has been properly plugged.

82-11-163. *(Effective on occurrence of contingency)* **Landowner's bond on noncommercial well.** If the owner of the surface land upon which has been drilled a well that fails to produce oil or gas in commercial quantities acquires the well for domestic purposes, the board may cancel and absolve the bond required in 82-11-123(1)(e) upon its acceptance of surety in the form of a certificate of deposit or a surety bond in the amount of $5,000 for a single well or in the amount of $10,000 for more than one well or in the form of a property bond of two times the value of the required certificate of deposit or surety bond. The release of the certificate of deposit, surety bond, or property bond must be conditioned on proof provided by the landowner that the well has been properly plugged.

History: En. Sec. 8, Ch. 530, L. 1989; amd. Sec. 1, Ch. 278, L. 1999; amd. Sec. 22, Ch. 474, L. 2009.

Compiler's Comments

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

82-11-164. Lien created. (1) The oil and gas production damage mitigation account has a lien in the amount of the expenditure from the account under 82-11-161(4), plus interest accrued at the rate of 10% a year, against all real and personal property in this state owned by the responsible person or in which the responsible person has an interest.

(2) The lien created under subsection (1) must be filed in the office of the secretary of state and must attach to all real or personal property of the responsible person.

(3) A lien created by this section is valid until paid in full or otherwise discharged. The lien must be foreclosed in accordance with applicable laws governing foreclosure of liens.

History: En. Sec. 9, Ch. 530, L. 1989; amd. Sec. 5, Ch. 734, L. 1991.

Cross-References

Liens generally, Title 71, ch. 3.

82-11-165 through 82-11-170 reserved.

82-11-171. Terminated. Sec. 39, Ch. 15, Sp. L. July 1992.

History: En. Sec. 36, Ch. 15, Sp. L. July 1992.

82-11-172. Short title. Sections 82-11-172 through 82-11-174 may be known as the "Coal Bed Methane Production Offset Act".

History: En. Sec. 1, Ch. 578, L. 2001.

82-11-173. Legislative findings — purpose. (1) The legislature finds that a delay in the development of certain coal bed methane wells may inadvertently result in the loss of coal bed methane resources.

(2) The legislature further finds that because of the nature of this subsurface mineral resource, it is highly susceptible to collateral extraction and use through development efforts on adjacent federal, tribal, or other states' lands to the economic detriment of Montana and its citizens.

(3) The legislature further finds that there is a compelling state interest to authorize the board through this limited program to act in a timely and expeditious manner to permit coal bed methane wells to offset the collateral permitting of wells by other entities on nonjurisdictional lands that are not subject to permitting by the board under 82-11-103 in order to:

(a) protect coal bed methane mineral reserves from collateral extraction by others;

(b) provide economic benefits to the state;

(c) protect the private property rights of the owners of the mineral reserves;

(d) promote the balanced development of state lands and protect the mineral reserve interest held in trust for the benefit of state schools; and

(e) assist in providing much needed energy resources to the region.

History: En. Sec. 2, Ch. 578, L. 2001.

82-11-174. Offset permitting — geographic requirements. The board is authorized and directed to issue, upon application and subject to the regulatory requirements of the program and 82-11-175, permits for coal bed methane production wells that will offset permitting by federal agencies, tribal agencies, or agencies of other states of coal bed methane wells that are located within 1 mile of the perimeter of lands that are under the jurisdiction of the board.

History: En. Sec. 3, Ch. 578, L. 2001.

82-11-175. Coal bed methane wells — requirements. (1) Coal bed methane production wells that involve the production of ground water must comply with this section.

(2) Ground water produced in association with a coal bed methane well must be managed in any of the following ways:

(a) used as irrigation or stock water or for other beneficial uses in compliance with Title 85, chapter 2, part 3;

(b) reinjected to an acceptable subsurface strata or aquifer pursuant to applicable law;

(c) discharged to the surface or surface waters subject to the permit requirements of Title 75, chapter 5; or

(d) managed through other methods allowed by law.

(3) (a) Prior to the development of a coal bed methane well that involves the production of ground water from an aquifer that is a source of supply for appropriation rights or permits to appropriate under Title 85, chapter 2, the developer of the coal bed methane well shall notify and offer a reasonable mitigation agreement to each appropriator of water who holds an appropriation right or a permit to appropriate under Title 85, chapter 2, that is for ground water and for which the point of diversion is within:

(i) 1 mile of the coal bed methane well; or

(ii) one-half mile of a well that is adversely affected by the coal bed methane well.

(b) The mitigation agreement must address the reduction or loss of water resources and must provide for prompt supplementation or replacement of water from any natural spring or water well adversely affected by the coal bed methane well. The mitigation agreement is not required to address a loss of water well productivity that does not result from a reduction in the amount of available water because of production of ground water from the coal bed methane well.

History: En. Sec. 4, Ch. 578, L. 2001; Sec. 85-2-521, MCA 2001; redes. 82-11-175 by Sec. 1, Ch. 117, L. 2003.

82-11-176 through 82-11-179 reserved.

82-11-180. Preservation of property rights. (1) Title 82, chapter 11, parts 1 and 2, and the issuance of a permit for a carbon dioxide injection well pursuant to Title 82, chapter 11, parts 1 and 2, do not:

(a) prejudice the rights of property owners within a geologic storage reservoir to exercise rights that have not been committed to a storage reservoir; or

(b) prevent a mineral owner or mineral lessee from drilling through or near a storage reservoir to explore for and develop minerals, provided that the drilling, production, and related activities comply with board requirements that preserve the storage reservoir's integrity and implement Title 82, chapter 11, parts 1 and 2.

(2) Title 82, chapter 11, parts 1 and 2, may not be construed to:

(a) change or alter common law in accordance with 1-1-108 as it relates to the rights belonging to or the dominance of the mineral estate, including but not limited to the right to mine, drill, or recomplete a well, to inject substances to facilitate production, or to implement enhanced recovery for the purposes of recovery of oil, gas, or other minerals;

(b) impede or impair the ability of an oil and gas operator to inject carbon dioxide for enhanced recovery or to establish, verify, register, and sell emission reduction credits or attributes associated with the project;

(c) change or alter common law or statutory provisions regarding the ownership of surface or subsurface rights;

(d) diminish, impair, or in any way affect the rights of a natural gas public utility, as defined in 82-10-301, to own, operate, or control a gas storage reservoir in use prior to May 6, 2009; or

(e) apply within the exterior boundaries of any federally recognized Indian reservation within the state of Montana unless the governing body of the tribe adopts a carbon sequestration law and enters into a cooperative agreement with the state.

(3) If the ownership of the geologic storage reservoir cannot be determined from the deeds or severance documents related to the property by reviewing statutory or common law, it is presumed that the surface owner owns the geologic storage reservoir.

History: En. Sec. 1, Ch. 474, L. 2009.

82-11-181. *(Effective on occurrence of contingency)* **Geologic storage reservoir administrative fee — account established.** (1) (a) A geologic storage operator shall pay to the board a fee on each ton of carbon dioxide injected for storage for the purpose of carrying out the state's responsibility to monitor and manage geologic storage reservoirs. If a geologic storage operator chooses to indefinitely accept liability pursuant to 82-11-183(9)(a), the board shall remit the fee to the operator. If a geologic storage operator is required to maintain liability pursuant to 82-11-183(9)(b), the board may not remit the fee.

(b) The fee must be in the amount set by board rule.

(c) The amount must be based on the anticipated actual expenses that the board will incur in monitoring and managing geologic storage reservoirs during their postclosure phases.

(2) There is a geologic storage reservoir program account in the special revenue fund.

(3) (a) Each fiscal year there must be deposited in the account the fees collected pursuant to 82-11-184(2)(b) and subsection (1) of this section, to be used by the board for monitoring and managing geologic storage reservoirs pursuant to 82-11-183(6) and (8).

(b) Funds received from bonds or other surety as authorized in 82-11-123(1)(f) and 82-11-183 must be deposited in the account.

(4) Interest and earnings on the funds in the geologic storage reservoir program account accrue to that account.

History: En. Sec. 2, Ch. 474, L. 2009.

Compiler's Comments

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

82-11-182. *(Effective on occurrence of contingency)* **Liability for carbon dioxide during injection.** (1) Until the certificate of project completion is issued pursuant to 82-11-183(1) and title to the stored carbon dioxide and geologic storage reservoir is transferred to the state pursuant to 82-11-183(7), the geologic storage operator is liable for the operation and management of the carbon dioxide injection well, the geologic storage reservoir, and the injected or stored carbon dioxide.

(2) Bond or other surety furnished pursuant to 82-11-123(1)(f) must be adequate to meet the requirements of subsection (1).

(3) For the purposes of 82-11-183 and this section, "title" includes title to the geologic storage reservoir and the stored carbon dioxide.

History: En. Sec. 3, Ch. 474, L. 2009; amd. Sec. 26, Ch. 123, L. 2013.

Compiler's Comments

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

82-11-183. *(Effective on occurrence of contingency)* **Certificate of completion — department of environmental quality participation — transfer of liability.** (1) Pursuant to subsection (3), after carbon dioxide injections into a reservoir end and upon completion of the certification requirements pursuant to subsections (4) and (5), the board shall issue the geologic storage operator a certificate of project completion.

(2) The board:

(a) shall adopt rules pursuant to 82-11-111 necessary for implementing subsection (4) of this section, including rules for public notice and hearing; and

(b) may, pursuant to 82-11-111, adopt any other rules necessary for administration of this section.

(3) Except as provided in subsection (11), the certificate may not be issued until at least 25 years after carbon dioxide injections end.

(4) Subject to subsection (5), the certificate may be issued only if the geologic storage operator:

(a) is in full compliance with regulations governing the geologic storage reservoir pursuant to this part;

(b) shows that the geologic storage reservoir will retain the carbon dioxide stored in it;

(c) shows that all wells, equipment, and facilities to be used in the postclosure period are in good condition and retain mechanical integrity;

(d) shows that it has plugged wells, removed equipment and facilities, and completed reclamation work as required by the board;

(e) shows that the carbon dioxide in the geologic storage reservoir has become stable, which means that it is essentially stationary or chemically combined or, if it is migrating or may migrate, that any migration will not cross the geologic storage reservoir boundary; and

(f) except as provided in subsection (11), shows that the geologic storage operator will continue to provide adequate bond or other surety after receiving the certificate of completion for at least 25 years following issuance of the certificate of completion and that the operator continues to accept liability for the geologic storage reservoir and the stored carbon dioxide.

(5) (a) Prior to issuing a certificate of completion, the board shall solicit, document, consider, and address comments from the department of environmental quality.

(b) Notwithstanding subsection (5)(a), the board makes the final decision on issuance of the certificate.

(6) Except as provided in subsection (11), after issuing a certificate of completion, the board shall ensure adequate monitoring by the operator of the wells and reservoir, verifying compliance with subsection (4), for a period of 25 years.

(7) (a) Following the monitoring and verification required in subsection (6) and subject to subsections (7)(b) and (7)(c), if the geologic storage operator has title to the geologic storage reservoir and the stored carbon dioxide, the geologic storage operator may transfer title to the geologic storage reservoir and to the stored carbon dioxide to the state.

(b) Prior to a transfer of title, the monitoring pursuant to subsection (6) must show that:

(i) the reservoir and wells are in full compliance with regulations pursuant to this part; and

(ii) the reservoir will maintain its structural integrity and will not allow carbon dioxide to move out of one stratum into another or pollute drinking water supplies.

(c) (i) Prior to a transfer of title, the board shall solicit, document, consider, and address comments from the department of environmental quality.

(ii) The board shall make a recommendation to the board of land commissioners as to whether title should transfer to the state.

(iii) Notwithstanding subsections (7)(c)(i) and (7)(c)(ii), the board of land commissioners shall make the final decision on the transfer of title.

(8) If liability is transferred pursuant to subsection (7):

(a) title is transferred, without payment or any compensation, to the state;

(b) title acquired by the state includes all rights and interests in and all responsibilities associated with the geologic storage reservoir and the stored carbon dioxide;

(c) the geologic storage operator and all persons who generated any injected carbon dioxide are released from all regulatory requirements and liability associated with the geologic storage reservoir and the stored carbon dioxide;

(d) any bonds or other surety posted by the geologic storage operator must be released; and

(e) monitoring and managing the geologic storage reservoir and the stored carbon dioxide is the state's responsibility to be overseen by the board until the federal government assumes responsibility for the long-term monitoring and management of geologic storage reservoirs and stored carbon dioxide.

(9) (a) If the operator does not transfer title to the state pursuant to subsection (7), the operator indefinitely accepts liability, except as provided in subsection (10), for the stored carbon dioxide and the geologic storage reservoir.

(b) If the operator is found not to be in compliance with subsection (7)(b), the operator retains liability until the operator is able to meet the requirements.

(10) After receiving a certificate of completion, every 25 years after completing the monitoring and verification required by subsection (6), an operator may petition the board and request to transfer liability to the state and be released from liability pursuant to subsection (8). An operator who petitions the board pursuant to this subsection (10) may not request that the fee required by 82-11-181(1) or 82-11-184(2)(b) be remitted.

(11) (a) The board, in consultation with the appropriate federal agencies, the department of environmental quality, and the department of natural resources and conservation, may adopt rules allowing for compliance with the requirements of this part in a period of time of less than 50 years.

(b) The rules must:

(i) ensure compliance with monitoring and verification requirements; and

(ii) ensure that an operator provides an adequate bond or other surety and accepts liability for the geologic storage reservoir and the stored carbon for a period of at least 30 years before transferring liability to the state pursuant to subsection (7).

History: **En. Sec. 4, Ch. 474, L. 2009; amd. Sec. 1, Ch. 264, L. 2011.**

Compiler's Comments

Contingent Effective Date: Section 1, Ch. 264, L. 2011, provided: "[This act] is effective on occurrence of the contingency contained in section 31(1), Chapter 474, Laws of 2009."

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

82-11-184. *(Effective on occurrence of contingency)* **Conversion of enhanced recovery wells.** (1) A well regulated under this chapter in which carbon dioxide is injected for the purpose of enhancing the recovery of oil and gas may be converted to a carbon dioxide injection well.

(2) (a) The board shall develop rules with regard to the conversion of wells referred to in subsection (1) to carbon dioxide injection wells. The rules must be in accordance with all application, permitting, and regulatory requirements for carbon dioxide injection wells pursuant to this part.

(b) The rules must include provisions for a fee to be paid by the owner of a converted well in an amount equivalent to the fee required to be paid by a geologic storage operator pursuant to 82-11-181(1).

(3) Wells converted to carbon dioxide injection wells pursuant to this section are subject to carbon dioxide injection well and geologic storage reservoir regulations pursuant to this chapter, including requirements for bonding or other surety, the issuance of a certificate of completion, and acceptance or transfer of liability.

History: **En. Sec. 5, Ch. 474, L. 2009.**

Compiler's Comments

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

82-11-185. *(Effective on occurrence of contingency)* **Makoshika state park requirements.** (1) Except as provided in subsection (3), on lands managed as Makoshika state park pursuant to Title 23, chapter 1, and under the control of the department of fish, wildlife, and parks by grant, acquisition, lease, easement, or other means, a person may not:

(a) drill, construct, convert, or operate an oil or gas well, stratigraphic test well, or core hole;

(b) conduct vibroseis, drill a seismic shot hole, or set a surface charge;

(c) explore for oil or gas in a manner that damages the land surface; or

(d) construct or place any surface facility associated with oil or gas exploration or development.

(2) The prohibitions in subsection (1) do not preclude the development of geologic storage reservoirs or of oil or gas resources from beneath Makoshika state park through directional

drilling or access from property outside the boundaries of the state park provided that the surface resources of the state park are not disturbed.

(3) The prohibitions listed in subsection (1) do not apply to geologic storage reservoirs or to oil or gas resources within Makoshika state park that are owned by a private person, nor do the prohibitions apply to school trust lands within the boundaries of the park. The state acknowledges the mineral rights of Dawson County and the state school trust and the private property rights of persons owning private mineral rights within Makoshika state park. The department of fish, wildlife, and parks is directed to conduct negotiations with the owners of mineral rights within Makoshika state park with the purpose of acquiring those rights in the name of the state.

History: **En. Sec. 6, Ch. 474, L. 2009.**

Compiler's Comments

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

82-11-186 and 82-11-187 reserved.

82-11-188. Incidental carbon dioxide storage — certification. (1) An operator or producer of an oil or gas enhanced recovery project may request that the board certify the quantity of carbon dioxide being stored incidentally through the enhanced recovery project.

(2) The operator or producer shall submit a plan to account for the incidentally stored carbon dioxide on a form provided by the board.

(3) Upon approval of the plan, the board shall certify the amount of carbon dioxide incidentally stored through the enhanced recovery project.

(4) An application for certification pursuant to this section is not an application for a geologic storage project or a carbon dioxide injection well for injection in a geologic storage reservoir. Certification of incidentally stored carbon dioxide pursuant to this section does not convert an enhanced recovery project to a geologic storage project and does not subject the enhanced recovery project to the requirements of the carbon dioxide injection well regulations or geologic storage reservoir regulations pursuant to this chapter.

History: **En. Sec. 1, Ch. 129, L. 2015.**

Part 2
Unit Operations

82-11-201. *(Temporary)* **Establishment of well spacing units.** (1) To prevent or to assist in preventing waste of oil or gas prohibited by this chapter, to avoid the drilling of unnecessary wells, or to protect correlative rights, the board, upon its own motion or upon application of an interested person, after hearing, may by order establish:

(a) temporary spacing units on a statewide basis or for defined areas within the state for oil, gas, or oil and gas wells drilled to varying depths; and

(b) permanent spacing units for a discovered pool, except in those pools that, prior to April 1, 1953, have been developed to such an extent that it would be impracticable or unreasonable to establish spacing units at the existing stage of development.

(2) The size and the shape of temporary spacing units must be established to promote the orderly development of unproven areas and must be uniform throughout the surface area and depths covered by the unit. A temporary spacing unit must remain in effect until superseded by an order issued by the board or until a permanent spacing unit is established.

(3) Permanent spacing units do not need to be uniform in size or shape but must result in the efficient and economic development of the pool as a whole. In establishing permanent spacing units, the acreage to be embraced within a unit and the shape of the unit must be determined by the board based upon evidence introduced at the hearing. The board may divide a pool into zones and establish spacing units for each zone if necessary for a purpose mentioned in subsection (1) or to facilitate production through the use of innovative drilling and completion methods. The spacing units within the zone may differ in size and shape from spacing units in any other zone but may not be smaller than the maximum area that can be efficiently and economically drained by one well.

(4) An order establishing temporary or permanent spacing units may permit only one well to be drilled and produced from the common source of supply on any spacing unit. The well must be drilled at a location authorized by the order, with an exception as may be reasonably necessary. The well location exception may be included in the request to establish permanent or temporary spacing units if, upon application, notice, and hearing, the board finds that the spacing unit is located on the edge of a pool or field and adjacent to a producing unit or, for some other reason, that the requirement to drill the well at the authorized location on the spacing unit would be inequitable or unreasonable. The board shall take action to offset any advantage that the person securing the exception may have over other producers by reason of drilling the well as an exception. The order must include provisions to prevent production from the spacing unit from being more than its just and equitable share of the producible oil and gas in the pool.

(5) An order establishing temporary or permanent spacing units for a pool must cover all lands determined or believed to be underlaid by the pool and may be modified after notice and hearing by the board to include additional areas subsequently determined to be underlaid by the pool.

(6) The board, upon application, notice, and hearing, may increase or decrease the size of a temporary or permanent spacing unit or permit the drilling of additional wells in a spacing unit for a purpose mentioned in subsection (1).

82-11-201. *(Effective on occurrence of contingency)* **Establishment of well spacing units.** (1) To prevent or to assist in preventing waste of oil or gas prohibited by this chapter, to avoid the drilling of unnecessary wells, or to protect correlative rights, the board, upon its own motion or upon application of an interested person, after hearing, may by order establish:

(a) temporary spacing units on a statewide basis or for defined areas within the state for carbon dioxide injection wells or oil, gas, or oil and gas wells drilled to varying depths; and

(b) permanent spacing units for a discovered pool, except in those pools that, prior to April 1, 1953, have been developed to an extent that it would be impracticable or unreasonable to establish spacing units at the existing stage of development.

(2) The size and the shape of temporary spacing units must be established to promote the orderly development of unproven areas and must be uniform throughout the surface area and depths covered by the unit. A temporary spacing unit must remain in effect until superseded by an order issued by the board or until a permanent spacing unit is established.

(3) Permanent spacing units do not need to be uniform in size or shape but must result in the efficient and economic development of the pool as a whole. In establishing permanent spacing units, the acreage to be embraced within a unit and the shape of the unit must be determined by the board based upon evidence introduced at the hearing. The board may divide a pool into zones and establish spacing units for each zone if necessary for a purpose mentioned in subsection (1) or to facilitate production through the use of innovative drilling and completion methods. The spacing units within the zone may differ in size and shape from spacing units in any other zone but may not be smaller than the maximum area that can be efficiently and economically drained by one well.

(4) An order establishing temporary or permanent spacing units may permit only one well to be drilled and produced from the common source of supply on any spacing unit. The well must be drilled at a location authorized by the order, with an exception as may be reasonably necessary. The well location exception may be included in the request to establish permanent or temporary spacing units if, upon application, notice, and hearing, the board finds that the spacing unit is located on the edge of a pool or field and adjacent to a producing unit or, for some other reason, that the requirement to drill the well at the authorized location on the spacing unit would be inequitable or unreasonable. The board shall take action to offset any advantage that the person securing the exception may have over other producers by reason of drilling the well as an exception. The order must include provisions to prevent production from the spacing unit from being more than its just and equitable share of the producible oil and gas in the pool.

(5) An order establishing temporary or permanent spacing units for a pool must cover all lands determined or believed to be underlaid by the pool and may be modified after notice and hearing by the board to include additional areas subsequently determined to be underlaid by the pool.

(6) The board, upon application, notice, and hearing, may increase or decrease the size of a temporary or permanent spacing unit or permit the drilling of additional wells in a spacing unit for a purpose mentioned in subsection (1).

History: En. Sec. 6, Ch. 238, L. 1953; amd. Sec. 58, Ch. 253, L. 1974; R.C.M. 1947, 60-129; amd. Sec. 1, Ch. 313, L. 1993; amd. Sec. 1, Ch. 244, L. 2009; amd. Sec. 23, Ch. 474, L. 2009.

Compiler's Comments

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.
Administrative procedure, 82-11-141.

82-11-202. Pooling of interest within spacing unit. (1) (a) When two or more separately owned tracts are embraced within a temporary or permanent spacing unit or when there are separately owned interests in all or a part of the spacing unit, then the persons owning those interests may pool their interests for the development and operation of the spacing unit.

(b) The board, upon the application of an interested person, may enter an order pooling all interests in the permanent spacing unit for the development and operation of the permanent spacing unit and the allocation of production if the applicant has made an unsuccessful, good faith attempt to voluntarily pool the interests within the permanent spacing unit. The applicant must be a person who owns an interest in the oil or gas underlying the permanent spacing unit or who has drilled a well, proposes to drill a well, or proposes to conduct other operations on a well, including recompleting, deepening, or stimulation. The pooling order must be made after a board hearing, is effective from the date of first operations within the spacing unit, and must be upon terms and conditions that are just and reasonable and that afford to the owner of each tract or interest in the permanent spacing unit the opportunity to recover or receive without unnecessary expense a just and equitable share of the oil or gas produced and saved from the spacing unit. Operations incident to the drilling of a well upon any portion of a permanent spacing unit covered by a pooling order are considered, for all purposes, the conduct of the operations upon each separately owned tract in the spacing unit by the several owners of the tracts. That portion of the production allocated to each tract included in a permanent spacing unit covered by a pooling order must when produced be considered for all purposes to have been produced from the tract by a well drilled on the tract.

(2) (a) As to each owner who refuses to pay the owner's share of the costs of development or other operations referred to in subsection (1), the order must provide for payment of the owner's share of the cost out of and only out of production from the well allocable to the owner's interest in the permanent spacing unit, excluding royalty or other interest not obligated to pay any part of the cost and excluding the royalty provided for in subsection (2)(c). If a well has not been drilled prior to the hearing on the application, the pooling order must provide for the drilling and operating of a well on the permanent spacing unit and for the payment of the cost of the well, which may include a reasonable charge for supervision, handling, and storage. If a dispute arises as to the cost, the board by subsequent order, after notice and hearing, shall determine the proper cost. The order may provide in substance that the owners who agree to share in the cost of drilling and operating the well are, unless they agree otherwise, entitled to receive, subject to royalty or similar obligations, all of the production of the well until they have recovered all of the costs out of the production. After all costs of drilling and operation are recovered, all of the owners in the permanent spacing unit are entitled to receive their respective shares of the production of the well as their interest may appear after deducting their respective shares of current operating costs.

(b) If a well has been drilled prior to the hearing on the application and an owner, after written demand, has failed or refused to pay the owner's share of the costs of development or other operations referred to in subsection (1) or if a well has not been drilled prior to the hearing on the application and an owner refuses to agree to pay the owner's share of drilling and completion costs, in addition to the costs under subsection (2)(a), the order must include as costs:

(i) 100% of the refusing owner's share of the cost of newly acquired surface equipment beyond the wellhead connections, including but not limited to stock tanks, separators, treaters, pumping equipment, and piping, plus 100% of the refusing owner's share of the cost of operation of the well commencing with first production and continuing until the agreeing owners have recovered the costs; and

(ii) 200% of the refusing owner's share of the costs and expenses of staking, well site preparation, obtaining rights-of-way, rigging up, drilling, reworking, deepening or plugging back, testing, and completing the well, after deducting any cash contributions received from the refusing owners by the agreeing owners, and 200% of that portion of the cost of equipment in the well, including the wellhead connections.

(c) A refusing owner of an oil and gas interest in a spacing unit that is not subject to any lease or other contract for development of oil and gas is considered to own a landowner royalty equal to one-eighth of the owner's proportionate share of production from the well until such time as the consenting owners recover the costs specified in subsection (2)(b). Any interest in production from the spacing unit to which the interest of the refusing owner may be subject must be deducted from the royalty considered to be owned by the refusing owner. After costs have been recovered by the agreeing owners, the refusing owner owns the refusing owner's proportionate share of the well, surface facilities, and production and is liable for further costs as if the refusing owner had originally agreed to drilling of the well.

(d) The operator of a well under a pooling order in which there is a refusing owner shall upon demand furnish the refusing owner with a monthly statement of all costs incurred, together with the quantity of oil or gas produced and the amount of proceeds realized from the sale of production during the preceding month.

(e) If an owner of an oil and gas interest in a temporary spacing unit refuses to agree to pay the owner's share of the costs of drilling and operating a well drilled within the unit and an application is filed for pooling of the interests in the well in a permanent spacing unit, the board shall, upon hearing the application for pooling of the interests for the well, order that the parties who agreed to share in the cost of drilling and operating the well prior to commencement of the drilling operation recover out of the refusing owner's share of the costs as provided in subsections (2)(a) and (2)(b).

(3) (a) An owner is presumed to have refused to pay the owner's share of costs if the owner fails to pay or agree in writing to promptly pay their share of the costs after notice by the well operator of either:

(i) an acknowledgment in writing by the owner; or

(ii) by certified mail to the owner, addressed to the owner's address of record in the office of the clerk and recorder of the county where the well is to be drilled or to the owner's address on file with the board.

(b) The notice must:

(i) allow the owner 30 days to elect to pay the owner's share of costs; and

(ii) set forth the location of the well, the projected depth and target formations, the anticipated costs of drilling and completing the well, and the anticipated or actual spud date of the well.

History: En. Sec. 7, Ch. 238, L. 1953; amd. Sec. 59, Ch. 253, L. 1974; R.C.M. 1947, 60-130; amd. Sec. 1, Ch. 694, L. 1985; amd. Sec. 2, Ch. 313, L. 1993; amd. Sec. 1, Ch. 441, L. 2023.

Cross-References

Pooling agreements and unit operations by Board of Land Commissioners, 77-3-430.
Acreage pooling by political subdivisions, 82-10-202.
Administrative procedure, 82-11-141.

82-11-203. Pooling agreements not in violation of antitrust laws. (1) An agreement for the unit or cooperative development and operation of a field or pool or any part of either or for conducting repressuring or pressure maintenance operations, cycling or recycling operations, including the extraction and separation of liquid hydrocarbons from natural gas in connection therewith, or any other method of unit or cooperative operation, including water flooding, is authorized and may be performed.

(2) Such an agreement does not violate any of the statutes of this state relating to trusts, monopolies, or contracts and combinations in restraint of trade if the agreement is approved by the board as being in the public interest and reasonably necessary to increase ultimate recovery or to prevent waste of oil or gas.

History: En. Sec. 8, Ch. 238, L. 1953; amd. Sec. 60, Ch. 253, L. 1974; R.C.M. 1947, 60-131.

Cross-References

Restraint of trade, Title 30, ch. 14, part 2.

82-11-204. *(Temporary)* **Hearing on operation of pool as unit.** (1) The board, upon the application of persons owning leasehold interests underlying 60% of the surface within the delineated area, shall hold a hearing to consider the need for the operation as a unit of one or more pools or parts thereof in a field for enhanced recovery purposes as to oil or oil and gas, to increase ultimate recovery, or to prevent waste of gas from pools or portions of pools where gas only is produced.

(2) At least 60 days prior to application, the applicant shall, by registered or certified mail, notify all known persons owning an interest in the oil and gas within the proposed unit area as disclosed by the records of the county or counties in which the proposed unit area is situated, at those persons' last-known addresses, of the applicant's intention to make the application. At the same time producers shall be furnished with a plan of unit operations. Upon written request of an operator of a lease which is in whole or in part within the confines of the proposed delineated area, the applicant shall furnish the operator with copies of any exhibits to be submitted to the board at the time of hearing.

82-11-204. *(Effective on occurrence of contingency)* **Hearing on operation of pool as unit.** (1) (a) The board, upon the application of persons owning leasehold interests underlying 60% of the surface within the delineated area, shall hold a hearing to consider the need for the operation as a unit of one or more pools or parts of the pools in a field for enhanced recovery purposes related to oil or oil and gas, to increase ultimate recovery, or to prevent waste of gas from pools or portions of pools where gas only is produced.

(b) The board, upon the application of persons owning or holding subsurface storage rights of 60% of the storage capacity of the proposed storage area, shall hold a hearing to consider the need for the operation of a unit for the long-term storage of carbon dioxide.

(2) (a) At least 60 days prior to application, the applicant shall, by registered or certified mail, notify all known persons owning an interest in the oil and gas within the proposed unit area as disclosed by the records of the county or counties where the proposed unit area is situated, at those persons' last-known addresses, of the applicant's intention to make the application.

(b) At least 60 days prior to application, if the application is for a carbon dioxide storage reservoir, the applicant shall, by registered or certified mail, notify all persons with an ownership interest in the surface, subsurface storage rights, and the subsurface minerals within the proposed unit area as disclosed by the records of the county or counties where the proposed unit area is situated, at those persons' last-known addresses, of the applicant's intention to make the application.

(c) At the same time producers must be furnished with a plan of unit operations. Upon written request of an operator of a lease that is in whole or in part within the confines of the proposed delineated area, the applicant shall furnish the operator with copies of any exhibits to be submitted to the board at the time of hearing.

History: En. Sec. 1, Ch. 33, L. 1969; amd. Sec. 1, Ch. 150, L. 1971; amd. Sec. 61, Ch. 253, L. 1974; amd. Sec. 2, Ch. 336, L. 1977; R.C.M. 1947, 60-131.1; amd. Sec. 24, Ch. 474, L. 2009.

Compiler's Comments

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

Cross-References

Unit operation not restraint of trade, 82-11-215.

82-11-205. *(Temporary)* **Board order for unit operation — criteria.** The board shall make an order providing for the unit operation of a pool or pools or part thereof if it determines, based on evidence presented at the hearing, that:

(1) such operation is reasonably necessary to increase the ultimate recovery of oil or gas;

(2) the value of the estimated additional recovery of oil or gas less royalties or, as to gas pools only, the value of the economies to be effected, exceeds the estimated additional cost incident to conducting such operations; and

(3) the full areal extent of the pool or pools or part thereof has been reasonably defined and determined by drilling operations.

82-11-205. *(Effective on occurrence of contingency)* **Board order for unit operation — criteria.** The board shall make an order providing for the unit operation of a pool or pools or part of the pools or of a geologic storage reservoir if it determines, based on evidence presented at the hearing, that:

(1) the operation is reasonably necessary to increase the ultimate recovery of oil or gas or the operation is necessary for the long-term storage of carbon dioxide;

(2) the value of the estimated additional recovery of oil or gas less royalties or, as to gas pools only, the value of the economies to be effected, exceeds the estimated additional cost incident to conducting the operations; and

(3) (a) the full areal extent of the pool or pools or part of the pools has been reasonably defined and determined by drilling operations; or

(b) in the case of a geologic storage reservoir, the full areal extent of the project has been reasonably defined and determined by drilling operations, geologic interpretation, seismic information, or other information acceptable to the board.

History: En. Sec. 2, Ch. 33, L. 1969; amd. Sec. 2, Ch. 150, L. 1971; amd. Sec. 62, Ch. 253, L. 1974; R.C.M. 1947, 60-131.2; amd. Sec. 25, Ch. 474, L. 2009.

Compiler's Comments

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

82-11-206. Terms and conditions of plan for unit operations. The order under 82-11-205 must be upon terms and conditions that are just and reasonable and must prescribe a plan for unit operations that includes:

(1) a description of the pool or pools or parts of a pool or pools to be operated, termed the unit area, but only so much of a pool as has reasonably been defined and determined by drilling operations to be productive of oil or gas may be included within the unit area. If the unit is formed solely for production of gas, a spacing unit on which is located a well producing or capable of producing gas on March 1, 1971, may not be included in the unit area without the written consent of the majority in interest of the working interest owners of the spacing unit and well.

(2) a statement of the nature and purpose of the plan and operations contemplated, together with a copy of the proposed unit agreement and unit operating agreement;

(3) a plan for allocating to each tract in the unit area its fair share of the oil and gas produced from the unit area and not required or consumed in the conduct of the operation of the unit area or unavoidably lost. A plan may not be approved by the board until it has considered the relative value that the share of production bears to the relative value of all of the separately owned tracts in the unit area, exclusive of physical equipment utilized in unit operations. In considering this relative value, the board shall weigh the economic value of the gas to all persons affected as compared to the economic value of the oil to all persons affected.

(4) a provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment contributed to the unit operations;

(5) a provision providing how the costs of unit operations, including overhead and capital investments, must be determined and charged to the separately owned tracts, including a provision for carrying or otherwise financing any owner who has not executed the proposed unit operating agreement and who elects to be carried or otherwise financed, allowing an interest charge of the then-current prime rate plus 2% for the service. Recovery of the money advanced plus interest must be limited to and only be recoverable from the owners' share of production. The recovery must be as follows:

(a) (i) in the case of a field producing oil or oil and gas, during the period of depletion of the remaining estimated primary reserves from the unit, only from the production that is in excess of the owners' average actual rate of production during the 18 months immediately preceding the effective date of the unit;

(ii) during the period subsequent to the depletion of the remaining estimated primary reserves from the unit, from 100% of the owners' share of production;

(iii) for purposes of this subsection (5)(a), the term "primary reserves" means the oil or gas that would be produced from the unitized pool or pools as a result of the natural energy in the pool or pools and without the introduction of an enhanced recovery program;

(b) in the case of a field producing only gas, from 100% of the owners' share of production;

(c) in the case of any enhanced recovery program that is initiated subsequent to a secondary recovery program, the recovery must be from 75% of the owners' increased share of production from the subsequent program;

(6) a provision for the supervision and conduct of the unit operations, in respect to which each owner has a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the interest of the owner;

(7) a provision by which the unit operator, after having operated for a minimum period of 2 years, may be challenged by any other owner in the unit, and the challenging owner may succeed to the unit operations upon a showing that:

(a) the challenging owner can operate more efficiently and economically than the present operator;

(b) the challenging owner is qualified and financially responsible;

(c) a majority of the other owners, both in number and in percentage and exclusive of the challenged operator, approved the challenging owner becoming unit operator; and

(d) the challenged operator does not initiate the conditions of operations of the challenging owner within 60 days of the challenged operator's receipt of the conditions of operations;

(8) the time when the unit operations must commence and the manner in which and the circumstances under which the unit operations must terminate; and

(9) additional provisions that are found to be appropriate for carrying on unit operations and for the protection and adjustment of correlative rights.

History: **En. Sec. 3, Ch. 33, L. 1969; amd. Sec. 3, Ch. 150, L. 1971; amd. Sec. 63, Ch. 253, L. 1974; amd. Sec. 3, Ch. 336, L. 1977; R.C.M. 1947, 60-131.3; amd. Sec. 2745, Ch. 56, L. 2009.**

82-11-207. Approval of plan for unit operations by persons paying costs. An order of the board providing for unit operations may not become effective unless the plan for unit operations prescribed by the board has been approved in writing by those persons who under the board's order will be required to pay at least 70% of the costs of the unit operations and also by the persons owning at least 60% of the production or proceeds of the unit operations that will be credited to interests that are free of cost, such as royalties, overriding royalties, and production payments, and the board has made a finding, either in the order providing for unit operations or in a supplemental order, that the plan for unit operations has been approved. However, if one owner who is obligated to pay costs of the unit operation owns 70% or more but less than 100%, the approval of that owner and at least one other owner is required, and if one person entitled to production or proceeds of the production that will be credited to interests that are free of costs owns 60% or more but less than 100%, the approval of that person and at least one other owner is required. If the plan for unit operations has not been approved at the time the order providing for unit operations is made, the board shall, upon application and notice, hold supplemental hearings that may be required to determine if and when the plan for unit operations has been approved. If the requisite number of owners and persons and the requisite percentage of interests in the unit area do not approve the plan for unit operations within a period of 6 months from the date on which the order providing for unit operations is made, the board shall revoke the order unless, for good cause shown, the board extends the time.

History: **En. Sec. 4, Ch. 33, L. 1969; amd. Sec. 64, Ch. 253, L. 1974; R.C.M. 1947, 60-131.4; amd. Sec. 1, Ch. 311, L. 2009.**

82-11-208. Board orders — amendment. An order providing for unit operations may be amended by an order made by the board in the same manner and subject to the same conditions and notice as an original order providing for unit operations; however, if such an amendment affects only the rights and interests of the owners, the approval of the amendment by the persons owning interests which are free of costs, such as royalties, overriding royalties, and production payments, is not required, and an order of amendment may not change the percentage for the allocation of oil and gas as established for any tract by the original order, except with the consent of all persons owning oil and gas rights in the tract, or change the percentage for the allocation of cost as established for any tract by the original order, except with the consent of all owners in the tract.

History: **En. Sec. 5, Ch. 33, L. 1969; amd. Sec. 65, Ch. 253, L. 1974; R.C.M. 1947, 60-131.5.**

82-11-209. Units established by previous order. The board may provide by an order for the unit operation of a pool or pools or parts of a pool or pools that embrace a unit established by an order of the board made prior to February 13, 1969. The order, in providing for the allocation of unit production, must first treat the unit area previously established as a single tract, and the portion of the unit production allocated to that tract must then be allocated among the tracts included in the previously established unit area in the same proportions as those specified in the previous order. A new owner whose interest by the order is added to the unit area and who becomes liable for the owner's proportionate share of the costs of unit operations is not liable for any unit operating costs incurred prior to the person's entry in the unit. At the time the interest is included in the unit, an equipment inventory must be made in order to charge the newly committed interest with its proportionate share of capital investment at its current value. An oil-in-storage inventory must be taken immediately prior to adding the newly committed interest.

History: **En. Sec. 6, Ch. 33, L. 1969; amd. Sec. 4, Ch. 150, L. 1971; amd. Sec. 66, Ch. 253, L. 1974; R.C.M. 1947, 60-131.6; amd. Sec. 2746, Ch. 56, L. 2009.**

82-11-210. Unit operations — less than whole of pool. An order may provide for unit operations on less than the whole of a pool where the unit area is of such size and shape as may be reasonably required for that purpose and the conduct thereof will have no adverse effect upon other portions of the pool.

History: **En. Sec. 7, Ch. 33, L. 1969; R.C.M. 1947, 60-131.7.**

82-11-211. Operations considered as done by all owners in unit. (1) All operations, including but not limited to the commencement, drilling, or operation of a well upon any portion of the unit area, shall be considered for all purposes the conduct of those operations upon each tract in the unit area by the several owners thereof. The portion of the unit production allocated to a tract in a unit area shall, when produced, be considered for all purposes to have been actually produced from the tract by a well drilled thereon.

(2) Operations conducted pursuant to an order of the board providing for unit operations shall constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the unit area to the extent that the obligations cannot be performed because of the order of the board.

History: **En. Sec. 8, Ch. 33, L. 1969; amd. Sec. 67, Ch. 253, L. 1974; R.C.M. 1947, 60-131.8.**

82-11-212. Property rights and operator's lien. That portion of the unit production allocated to any tract and the proceeds from the sale of that production must be the property and income of the persons to whom or to whose credit the proceeds are allocated or payable under the order providing for unit operations, except that the operator of the unit shall, subject to 82-11-206(5)(a), have a first and prior lien upon each owner's oil and gas rights and the owner's share of unitized production to secure the payment of that owner's proportionate part of developing and operating the unit area. The lien may be perfected and enforced in the same manner as provided in Title 71, chapter 3, part 5. Upon demand by any owner of working interest in any tract to which gas has been allocated, the unit operator shall deliver the allocated share of gas to the owner in kind. However, the operator and the other owners of interest may not be required to bear the cost of providing additional facilities for the delivery of the gas.

History: **En. Sec. 9, Ch. 33, L. 1969; amd. Sec. 5, Ch. 150, L. 1971; R.C.M. 1947, 60-131.9; amd. Sec. 2747, Ch. 56, L. 2009.**

Cross-References

Liens — generally, Title 71, ch. 3.

82-11-213. Contract not terminated by board order. A division order or other contract relating to the sale or purchase or production from a tract may not be terminated by the order providing for unit operations but shall remain in force and apply to oil and gas allocated to the tract until terminated in accordance with the provisions thereof.

History: **En. Sec. 10, Ch. 33, L. 1969; amd. Sec. 68, Ch. 253, L. 1974; R.C.M. 1947, 60-131.10.**

82-11-214. *(Temporary)* **Title to oil and gas rights not affected by board order.** Except to the extent that the parties affected so agree, an order providing for unit operations does not result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the owners within the unit area and shall be the property of those owners in the proportion that the expenses of unit operations are charged.

82-11-214. *(Effective on occurrence of contingency)* **Title to oil and gas rights not affected by board order.** Except to the extent that the parties affected agree and in accordance with 82-11-183(8), an order providing for unit operations does not result in a transfer of all or any part of the title of any person to the carbon dioxide rights or oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations under this part must be acquired for the account of the owners within the unit area and are the property of those owners in the proportion that the expenses of unit operations are charged.

History: En. Sec. 11, Ch. 33, L. 1969; amd. Sec. 69, Ch. 253, L. 1974; R.C.M. 1947, 60-131.11; amd. Sec. 26, Ch. 474, L. 2009.

Compiler's Comments

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

82-11-215. Unit operation not restraint of trade. The formation of a unit as provided in 82-11-204 through 82-11-216 and the operation of the unit under order of the board shall not be in violation of any statute of this state relating to trusts, monopolies, contracts, or combinations in restraint of trade.

History: En. Sec. 12, Ch. 33, L. 1969; amd. Sec. 70, Ch. 253, L. 1974; R.C.M. 1947, 60-131.12.

Cross-References

Restraint of trade, Title 30, ch. 14, part 2.

82-11-216. No creation of relationship between parties in unit. The formation of such a unit as herein provided will not create a relationship between the parties thereto which shall be deemed to be or constitute a joint endeavor, adventure, undertaking, association, or mining or other partnership.

History: En. Sec. 13, Ch. 33, L. 1969; R.C.M. 1947, 60-131.13.

Part 3

Interstate Oil and Gas Conservation Compact

82-11-301. Authorization to join interstate compact for conservation of oil and gas. The governor of the state of Montana is hereby authorized and directed, for and in the name of the state of Montana, to join with other states in the Interstate Compact To Conserve Oil and Gas, which was heretofore executed in the city of Dallas, Texas, on February 16, 1935, and is now deposited with the department of state of the United States and which has been extended with the consent of congress to September 1, 1947.

History: En. Sec. 1, Ch. 121, L. 1945; R.C.M. 1947, 60-601.

82-11-302. Interstate oil and gas compact. The Interstate Compact To Conserve Oil and Gas referred to in the above section, and which it is hereby proposed to enter and to extend by agreement reads as follows:

AN INTERSTATE COMPACT TO CONSERVE OIL AND GAS

Article I

This agreement may become effective within any compacting state at any time as prescribed by that state and shall become effective within those states ratifying it whenever any three of the states of Texas, Oklahoma, California, Kansas, and New Mexico have ratified and Congress has given its consent. Any oil-producing state may become a party hereto as hereinafter provided.

Article II

The purpose of this compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

Article III

(1) Each state bound hereby agrees that within a reasonable time it will enact laws or if laws have been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

(a) the operation of any oil well with an inefficient gas-oil ratio;

(b) the drowning with water of any stratum capable of producing oil or gas or both oil and gas in paying quantities;

(c) the avoidable escape into the open air or the wasteful burning of gas from a natural gas well;

(d) the creation of unnecessary fire hazards;

(e) the drilling, equipping, locating, spacing, or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof;

(f) the inefficient, excessive, or improper use of the reservoir energy in producing any well.

(2) The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.

Article IV

Each state bound hereby agrees that it will, within a reasonable time, enact statutes or if such statutes have been enacted then that it will continue the same in force, providing in effect that oil produced in violation of its valid oil and/or gas conservation statutes or any valid rule, order, or regulation promulgated thereunder shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

Article V

It is not the purpose of this compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof or create or perpetuate monopoly or to promote regimentation but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

Article VI

(1) Each state joining herein shall appoint one representative to a commission hereby constituted and designated as the interstate oil compact commission, the duty of which said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances, and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas, and at such intervals as said commission deems beneficial, it shall report its findings and recommendations to the several states for adoption or rejection.

(2) The commission shall have the power to recommend the coordination of the exercise of the police powers of the several states within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of said states and to recommend measures for the maximum ultimate recovery of oil and gas. Said commission shall organize and adopt suitable rules and regulations for the conduct of its business.

(3) No action shall be taken by the commission except:

(a) by the affirmative votes of the majority of the whole number of the compacting states, represented at any meeting; and

(b) by a concurring vote of a majority in interest of the compacting states at said meeting, such interest to be determined as follows: Such vote of each state shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half year to the daily average production of the compacting states during said period.

Article VII

No state by joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by any state subject such state to financial responsibility to the other states joining herein.

Article VIII

(1) This compact shall expire September 1, 1947. But any state joining herein may, upon 60 days' notice, withdraw herefrom.

(2) The representatives of the signatory states have signed this agreement in a single original which shall be deposited in the archives of the department of state of the United States, and a duly certified copy shall be forwarded to the governor of each of the signatory states.

(3) This compact shall become effective when ratified and approved as provided in Article I. Any oil-producing state may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified, and ratified.

(4) Done in the city of Dallas, Texas, this sixteenth day of February, 1935.

(Originally signed by the representatives of the following states: Oklahoma, Texas, New Mexico, Colorado, Illinois, Michigan, California, Arkansas, and Kansas.)

History: En. Sec. 2, Ch. 121, L. 1945; R.C.M. 1947, 60-602.

82-11-303. Extension of expiration date. The governor of Montana is further authorized and empowered, for and in the name of the state of Montana, to execute agreements for the further extension of the expiration date of the Interstate Compact To Conserve Oil and Gas and to determine if and when it is in the best interest of the state of Montana to withdraw from the compact upon 60 days' notice as provided by its terms. If the governor determines that the state should withdraw from the compact, the governor has full power and authority to give necessary notice and to take any and all steps necessary and proper to effect the withdrawal of the state of Montana from the compact.

History: En. Sec. 3, Ch. 121, L. 1945; R.C.M. 1947, 60-603; amd. Sec. 2748, Ch. 56, L. 2009.

82-11-304. Governor as member of interstate oil compact commission. The governor is the official representative of the state of Montana on the interstate oil compact commission, provided for in the Interstate Compact To Conserve Oil and Gas, and shall exercise and perform for the state of Montana all the powers and duties as a member of the interstate oil compact commission. However, the governor may appoint an assistant representative who shall act in the governor's stead as the official representative of the state of Montana as a member of the commission. The assistant representative shall take the oath of office prescribed by The Constitution of the State of Montana, which must be filed with the secretary of state.

History: En. Sec. 4, Ch. 121, L. 1945; R.C.M. 1947, 60-604; amd. Sec. 2749, Ch. 56, L. 2009.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

82-11-305. Limitation on power of representative. This part may not be construed as granting any power to the representative of the state of Montana in the representative's private or official capacity or to the interstate oil compact commission to prorate, allocate, regulate, or control oil or gas production or refined products of the production within the state of Montana or the markets for the production and may not have the effect or be construed as in any manner surrendering to the federal government any rights over or in the production, sale, or transportation of oil or gas or the refined products of oil or gas in the state of Montana. This part may not be construed to bind or obligate the state of Montana to enact any new legislation or to amend or alter any laws pertaining to the oil and gas industries in Montana.

History: En. Sec. 5, Ch. 121, L. 1945; R.C.M. 1947, 60-605; amd. Sec. 2750, Ch. 56, L. 2009.

Cross-References

Separation of powers, Art. III, sec. 1, Mont. Const.

82-11-306. Expenses of representative. The representative or the assistant representative appointed by the governor of the state of Montana to the oil compact commission must be allowed and paid the person's reasonable expenses while engaged in the performance of official duties, and the person's expenses and all other expense incurred in connection with the interstate oil compact and the interstate oil compact commission must be paid out of the board of oil and gas conservation revenue fund in accordance with the provisions of 82-11-135.

History: En. Sec. 6, Ch. 121, L. 1945; amd. Sec. 33, Ch. 39, L. 1977; R.C.M. 1947, 60-606; amd. Sec. 2751, Ch. 56, L. 2009.

CHAPTERS 12 THROUGH 14
RESERVED

CHAPTER 15
REGULATION OF PETROLEUM PRODUCTS

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Part 1
Regulation of Manufacture and Distribution

82-15-101. Definitions. As used in this part, the following definitions apply:

(1) "Antiknock index number" means the octane rating of the antiknock characteristics of a grade or type of motor fuel determined as provided in 16 CFR 306.0.

(2) "Dealer" means any person engaged in the petroleum business and includes petroleum dealers and liquefied petroleum dealers.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) "Liquefied petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or of selling or offering or advertising for sale or refining or manufacturing or keeping for sale in this state any petroleum product composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, butanes (normal butane or isobutane), and butylenes but excluding prepackaged liquefied petroleum products.

(5) "Liquefied petroleum product" means a product composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, butanes (normal butane or isobutane), and butylenes.

(6) "Liquefied petroleum product container" means a container approved by the American society of mechanical engineers that can hold 110 gallons or more of a liquefied petroleum product.

(7) "Mislabeled" means a package label or dispensing device of a product that bears any statement, design, or device regarding the product or regarding ingredients or substances in the

product or regarding the properties, quality, or kind of products that is false or misleading in any manner.

(8) "Owner" means a person:

(a) who is listed with the American society of mechanical engineers or with the manufacturer as owner by the serial number of the liquefied petroleum product container;

(b) who holds a written bill of sale or other instrument under which title to a liquefied petroleum product container was transferred; or

(c) who holds a paid invoice showing purchase of and payment for a liquefied petroleum product container.

(9) "Person" means an individual, trust, estate, partnership, corporation, joint-stock company, firm, agency, association, or any receiver appointed by law.

(10) "Petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or offering or advertising for sale, refining, manufacturing, or keeping for sale in this state any gasoline, kerosene, distillate, road oil, fuel oil, lubricating oil, or greases or any oil or gas or oil and gas product except prepackaged petroleum products and except as otherwise defined as a liquefied petroleum dealer in subsection (4).

(11) "Sell" and "sale" includes barter and exchange.

History: En. 60-234 by Sec. 1, Ch. 77, L. 1977; R.C.M. 1947, 60-234; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 65, L. 1993; amd. Sec. 213, Ch. 483, L. 2001; amd. Sec. 8, Ch. 452, L. 2005.

82-15-102. Enforcement of part — rules. (1) Except as provided in subsection (2), this part must be enforced by the department. It may adopt necessary and reasonable rules for the implementation of the provisions and intent of this part, and those rules have the effect of law.

(2) Section 82-15-110(8) must be enforced by the department of environmental quality.

(3) The department of environmental quality shall adopt rules for the regulation of methyl tertiary butyl ether in accordance with this part. The rules must establish:

(a) a trace level or trace levels of methyl tertiary butyl ether that may be contained in gasoline that is imported into the state, stored, distributed, sold, offered or exposed for sale, or dispensed in the state of Montana. The department of environmental quality shall establish trace levels in a manner that prevents the intentional addition of methyl tertiary butyl ether to gasoline but that allows for a residual amount of methyl tertiary butyl ether to remain in tanks following implementation of 82-15-110(8).

(b) reasonable sampling and reporting requirements; and

(c) requirements that the department of environmental quality determines are reasonable and necessary for implementation of the portions of this part that apply to methyl tertiary butyl ether.

History: En. 60-235 by Sec. 2, Ch. 77, L. 1977; R.C.M. 1947, 60-235; amd. Sec. 1, Ch. 385, L. 2005; amd. Sec. 9, Ch. 452, L. 2005; amd. Sec. 110, Ch. 324, L. 2021.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

82-15-103. Standards and specifications for petroleum products. The standards and specifications for petroleum products, including but not limited to gasoline, ethanol-blended gasoline, fuel oils, diesel fuel, kerosene, and liquefied petroleum gases, must be determined by the department and must be based on nationally recognized standards and specifications such as the standards and specifications that are published by the American society for testing and materials. The standards and specifications adopted by rule by the department are the standards and specifications for products sold in this state, and official tests of the products must be based on the adopted standards and specifications.

History: En. 60-236 by Sec. 3, Ch. 77, L. 1977; R.C.M. 1947, 60-236; amd. Sec. 78, Ch. 130, L. 2005; amd. Sec. 10, Ch. 452, L. 2005; amd. Sec. 1, Ch. 15, L. 2017.

82-15-104. Departments authorized to employ laboratory for testing. The department and, when testing for methyl tertiary butyl ether, the department of environmental quality may employ a laboratory that has sufficient facilities to make tests of petroleum products as required and may pay reasonable compensation for the analyses and tests made by the laboratory.

History: En. 60-237 by Sec. 4, Ch. 77, L. 1977; R.C.M. 1947, 60-237; amd. Sec. 2, Ch. 385, L. 2005; amd. Sec. 11, Ch. 452, L. 2005.

82-15-105. Licenses and fees — status of license on transfer of ownership. (1) A petroleum dealer or liquefied petroleum dealer may not do business in this state until licensed by the department. The license must be obtained by the dealer by making application to the department upon forms provided by the department. A dealer who has not been issued a license and who is found selling, offering for sale, delivering, or distributing petroleum products shall be punished upon conviction as provided by this part.

(2) The department shall adopt rules establishing license fees based upon the measuring devices used by the dealer. The fees may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party. The fees must be deposited in the state special revenue fund of the department for use in administrating and enforcing this part.

(3) All licenses are annual and expire on the anniversary date established by rule by the board of review established in 30-16-302. There is an additional charge of 50% on all license fees that are not paid within 60 days of the licensee's anniversary date. If the fee is not paid, the equipment must be sealed and removed from service by the department. It is unlawful for anyone to use a device removed from service or to break the seal until all fees have been paid.

History: En. 60-238 by Sec. 5, Ch. 77, L. 1977; R.C.M. 1947, 60-238; amd. Sec. 1, Ch. 252, L. 1983; amd. Sec. 1, Ch. 56, L. 1991; amd. Sec. 1, Ch. 498, L. 1993; amd. Sec. 20, Ch. 366, L. 1997; amd. Sec. 8, Ch. 54, L. 1999; amd. Sec. 1, Ch. 62, L. 2007.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

82-15-106. Refusing, suspending, and revoking licenses — hearing required. The department may refuse to grant a license or may suspend or revoke a license already granted for due cause after a hearing for which notice was provided for not less than 10 days. Violation of any provision of this part, except 82-15-110(8), or any lawful order or rule of the department is cause for which the department may suspend, revoke, or refuse to issue a license. The suspension, revocation, or refusal may be conditioned on terms that the department considers appropriate.

History: En. 60-239 by Sec. 6, Ch. 77, L. 1977; R.C.M. 1947, 60-239; amd. Sec. 3, Ch. 385, L. 2005; amd. Sec. 12, Ch. 452, L. 2005.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

82-15-107. Inspections, sampling, and tests by department to insure compliance with part. (1) For the purpose of obtaining information regarding suspected violation of this part, the department has access to all places where the commodities subject to regulation under this part are sold, offered for sale or kept for sale, manufactured, transported, or stored or where the books, papers, records, or documents relative to those transactions are kept and may inspect and copy them at any place in this state.

(2) The department may sample, inspect, and test any of the commodities subject to this part upon tendering payment for them, whether they originate at points outside the state or otherwise and whether they are in transport or at rest in places where they are to be sold.

History: En. 60-240 by Sec. 7, Ch. 77, L. 1977; R.C.M. 1947, 60-240.

Cross-References

Sale of gasoline and distillates on other than gross basis unlawful — exception, 30-12-409.

82-15-108. Approved measure required for part delivery. Part of a compartment delivery may be made only by an approved, calibrated, and sealed meter or an approved measure. Gauge stick measurement is not permitted. All tank markers must be positioned and sealed as provided by the department. The department shall fix by rule fees for retesting meters or measuring devices or vehicle tanks used for distribution by petroleum or liquefied petroleum dealers and for any other special service rendered.

History: En. 60-241 by Sec. 8, Ch. 77, L. 1977; R.C.M. 1947, 60-241.

Cross-References

Sale of gasoline and distillates on other than gross basis unlawful — exception, 30-12-409.

82-15-109. Full compartment sales — approval of meter. Full compartment sales or deliveries may only be made in a manner that shall be provided by the department by rule. All other sales or deliveries may only be made through a meter which has been approved, calibrated, and sealed by the department or by weight, unless otherwise provided by the department.

History: **En. 60-242 by Sec. 9, Ch. 77, L. 1977; R.C.M. 1947, 60-242.**

Cross-References

Sale of gasoline and distillates on other than gross basis unlawful — exception, 30-12-409.

82-15-110. Unlawful acts. It is unlawful to:

(1) use any meter or mechanical device for the measurement of gasoline or liquid fuels unless the meter or mechanical device has been approved by the department and sealed as correct;

(2) change or in any way tamper with the department's seal without written consent from the department;

(3) make delivery from petroleum vehicle tanks through a hose unless the tanks have been calibrated by the department under 82-15-108;

(4) sell or deliver liquefied petroleum to a consumer as a liquid or vapor except as provided by 82-15-109;

(5) sell or offer for sale or deliver liquefied petroleum to a consumer as a liquid or vapor, the measurement of which has not been temperature corrected to 60 degrees F by means of an automatic compensating device that has been approved, calibrated, and sealed by the department, unless otherwise provided by the department;

(6) sell, offer, or expose for sale any petroleum product for which standards or minimum specifications have been set by the department unless the fuel product meets in all respects the tests and standards prescribed;

(7) sell or offer or expose for sale any petroleum product that is adulterated, mislabeled, or misrepresented with respect to the use for which it is reasonably intended; or

(8) import into the state, store, distribute, sell, offer or expose for sale, or dispense any gasoline that contains methyl tertiary butyl ether in amounts that exceed the trace level or levels allowed by the rules adopted pursuant to 82-15-102(3)(a).

History: **En. 60-243 by Sec. 10, Ch. 77, L. 1977; R.C.M. 1947, 60-243; amd. Sec. 4, Ch. 385, L. 2005; amd. Sec. 13, Ch. 452, L. 2005.**

Cross-References

Criminal responsibility of corporations, 45-2-311.

Deceptive business practices, 45-6-318.

82-15-111. Penalty for violations. A person who purposely, knowingly, or negligently violates any of the provisions of this part, except 82-15-110(8), or any rule promulgated by the department is guilty of a misdemeanor and upon conviction shall for the first offense be punished by a fine of not less than $10 or more than $1,000 and shall be punished for any subsequent offense by a fine of not less than $50 or more than $5,000, by imprisonment in the county jail for a term not exceeding 1 year, or by both fine and imprisonment.

History: **En. 60-244 by Sec. 11, Ch. 77, L. 1977; R.C.M. 1947, 60-244; amd. Sec. 5, Ch. 385, L. 2005; amd. Sec. 15, Ch. 452, L. 2005.**

82-15-112. Injunction against violations. The department may apply to any court of competent jurisdiction for a temporary or permanent injunction, or both, restraining any person for violating any provision of this part or any rule promulgated by the department pursuant to this part.

History: **En. 60-245 by Sec. 12, Ch. 77, L. 1977; R.C.M. 1947, 60-245.**

Cross-References

Injunctions, Title 27, ch. 19.

82-15-113. Refilling of liquefied petroleum product containers — unlawful acts. Only the owner or a person authorized by the owner may:

(1) fill or refill a liquefied petroleum product container;

(2) deface, erase, obliterate, cover up, remove, conceal, or change the name or other identification of the owner or the information on the manufacturer's specification plate; or

(3) place the name of a person other than the owner on the liquefied petroleum product container.

History: **En. Sec. 2, Ch. 65, L. 1993.**

82-15-114. Violation — penalty. A person who violates 82-15-113 is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $500 or by imprisonment in the county jail for a term not exceeding 120 days, or both.

History: **En. Sec. 3, Ch. 65, L. 1993.**

82-15-115. Owner identification. The owner of a liquefied petroleum product container shall place the name, initials, or trademark of the owner on the dome near the filling apparatus of each container.

History: **En. Sec. 4, Ch. 65, L. 1993.**

82-15-116 through 82-15-119 reserved.

82-15-120. Department of environmental quality to enforce prohibition on methyl tertiary butyl ether — notice requirements — hearing — penalties. (1) (a) Whenever the department of environmental quality believes that a violation of 82-15-110(8) or of the rules adopted pursuant to 82-15-102(3) has occurred, it may serve written notice of the violation on the alleged violator or an agent of the alleged violator.

(b) The notice must specify the facts alleged to constitute a violation and may include an order assessing an administrative penalty pursuant to subsection (3), an order to take necessary corrective action within a reasonable period of time stated in the order, or both.

(c) The order becomes final unless, within 30 days after the notice is served, the person named in the order requests in writing a hearing before the board of environmental review. Service by mail is complete on the date of mailing.

(d) Upon receipt of the request, the board of environmental review shall schedule a hearing. The contested case provisions of the Montana Administrative Procedure Act provided in Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

(2) If, after a hearing held under subsection (1), the board of environmental review finds that a violation has occurred, it shall either affirm or modify the order of the department of environmental quality. An order issued by the department of environmental quality or by the board of environmental review may prescribe the date by which the violation must cease and may prescribe time limits for a particular action. If, after hearing, the board of environmental review finds no violation has occurred, it shall rescind the department of environmental quality's order.

(3) A violation of 82-15-110(8) or of a rule adopted pursuant to 82-15-102(3) is subject to an administrative penalty of up to $1,000. Each day of violation constitutes a separate violation.

(4) Any person who violates 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or an order issued under this section is subject to a civil penalty not to exceed $5,000 for each violation. Each day of violation constitutes a separate violation.

(5) The department of environmental quality is authorized to commence a civil action seeking appropriate relief, including temporary and permanent injunctions and penalties under subsection (4) of this section, for a violation of 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or a violation of an order issued under this section. The action must be brought in the district court of the county in which the violation occurred.

History: **En. Sec. 6, Ch. 385, L. 2005; en. Sec. 14, Ch. 452, L. 2005; amd. Sec. 52, Ch. 535, L. 2021.**

82-15-121. Repealed. Sec. 2, Ch. 15, L. 2017.

History: **En. Sec. 1, Ch. 452, L. 2005.**

82-15-122. Repealed. Sec. 2, Ch. 15, L. 2017.

History: **En. Sec. 2, Ch. 452, L. 2005.**

Part 2
Price Discrimination

82-15-201. Standard petroleum product defined. The term "standard petroleum product" as used herein refers to and includes gasoline, fuel oil, distillates, greases, and lubricating oils.

History: **En. Sec. 2, Ch. 111, L. 1935; re-en. Sec. 4193.2, R.C.M. 1935; R.C.M. 1947, 60-402.**

82-15-202. Purpose. This part is intended to compel a person, firm, company, association, or corporation doing business in the state of Montana and engaged in the selling of and dealing in standard petroleum products to treat a customer in one part of the state of Montana on an equal basis with a customer in another part of the state or in the nearest adjoining state and to promote the uniform application of the law of the state of Montana providing a tax on gasoline used by a motor vehicle when traveling over a public highway. This part shall be liberally construed to accomplish those purposes.

History: **En. Sec. 3, Ch. 111, L. 1935; re-en. Sec. 4193.3, R.C.M. 1935; R.C.M. 1947, 60-403; amd. Sec. 8, Ch. 201, L. 1979.**

Cross-References

Gasoline and vehicle fuels taxes, Title 15, ch. 70.

82-15-203. Discrimination in price of petroleum products. (1) Any person, firm, company, association, or corporation, either domestic or foreign, doing business in the state of Montana and engaged in the selling of any standard petroleum product that shall demand or collect from any person or customer a higher price for any standard petroleum product in one part of the state of Montana than the price being demanded or collected at substantially the same time by such person, firm, company, association, or corporation from other persons or customers in another part of the state of Montana or in the nearest adjoining state for a like article of standard petroleum product shall be guilty of discrimination which is hereby declared to be a fraud and the agents or officers of such person, firm, company, association, or corporation participating, guilty of a misdemeanor.

(2) In the trial of an action under the provisions of this part, in the determination of the justification of the price demanded or collected by a person, firm, company, association, or corporation charged with a violation of the provisions of this part, transportation, quantity of sales, emergencies, cost of doing business, or similar differences under the respective conditions may be offered as a matter of defense or justification for the differences in price demanded or collected. When competent evidence is offered in the trial of any action under this part of a demand for or the receipt of a higher price for any standard petroleum product in the state of Montana by any person, firm, company, association, or corporation than such person, firm, company, association, or corporation demanded, collected, or received at substantially the same time for the same or a similar article of standard petroleum product in another part of the state of Montana or in the nearest adjoining state, the burden of proof shall then be upon such person, firm, company, association, or corporation or agents or officers on trial to prove that the difference in the price demanded or collected was justified.

History: **En. Sec. 1, Ch. 111, L. 1935; re-en. Sec. 4193.1, R.C.M. 1935; R.C.M. 1947, 60-401.**

Cross-References

Unfair competition in sales, 30-14-207.

Accountability for conduct of corporation, 45-2-312.

82-15-204. Investigation of complaints — revocation of license. If a complaint is made to the attorney general that a person, firm, company, association, or corporation is guilty of discrimination as defined by this part, the attorney general shall investigate the complaint in a timely manner, and for that purpose the attorney general shall subpoena witnesses, administer oaths, take testimony, and require the production of books or other documents, and if, in the attorney general's opinion, sufficient grounds exist, the attorney general shall prosecute an action in the name of the state in the proper court to annul the charter or revoke the permit or license of the person, firm, company, association, or corporation, as the case may be, and to permanently enjoin the person, firm, company, association, or corporation from doing business in this state. If in the action the court finds that the person, firm, company, association, or corporation is guilty of discrimination as defined by this part, the court shall annul the charter or revoke the permit or license of the person, firm, company, association, or corporation and may permanently enjoin it or them from transacting business in this state.

History: **En. Sec. 4, Ch. 111, L. 1935; re-en. Sec. 4193.4, R.C.M. 1935; R.C.M. 1947, 60-404; amd. Sec. 2752, Ch. 56, L. 2009.**

82-15-205. County attorney to prosecute violations. If a person presents to the county attorney of any county in which the discriminatory acts of a person, firm, company, association, or corporation have been committed a sworn written statement of the price paid, the date, and the parties selling and buying and reasonably reliable information of the price demanded or collected by the person, firm, company, association, or corporation for a corresponding or similar article of standard petroleum product sold or offered for sale in another part of the state of Montana or in the nearest adjoining state by the person, firm, company, association, or corporation, the county attorney shall promptly investigate and either commence and prosecute an action or furnish the informant with a written statement of reasons for not commencing and prosecuting an action under this part.

History: En. Sec. 4-A, Ch. 111, L. 1935; re-en. Sec. 4193.5, R.C.M. 1935; R.C.M. 1947, 60-405; amd. Sec. 2753, Ch. 56, L. 2009.

82-15-206. Penalty. Any person, firm, company, association, or corporation violating any of the provisions of this part shall be guilty of a misdemeanor and shall be punishable by a fine of not exceeding $500.

History: En. Sec. 5, Ch. 111, L. 1935; re-en. Sec. 4193.6, R.C.M. 1935; R.C.M. 1947, 60-406.

Cross-References

Criminal responsibility of corporations, 45-2-311.
Accountability for conduct of corporation, 45-2-312.
Disposition of fines and forfeitures, 46-18-603.

82-15-207. Liability for civil and exemplary damages. In addition to the penalty above prescribed, any customer of such person, firm, company, association, or corporation may bring a civil action in any county in which such offending person, firm, company, association, or corporation may be doing business and recover therein not only actual damages for violation of this part but also exemplary damages for such reasonable sum as the jury may deem proper punishment for the unlawful practice of discrimination as herein defined.

History: En. Sec. 6, Ch. 111, L. 1935; re-en. Sec. 4193.7, R.C.M. 1935; R.C.M. 1947, 60-407.

Cross-References

Damages, Title 27, ch. 1, part 2.
When exemplary damages allowed, 27-1-221.
Measure of damages, Title 27, ch. 1, part 3.

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similar article of standard petroleum product sold or offered for sale in another part of the state of Montana or in the nearest adjoining state by the person, firm, company, association, or corporation, the county attorney shall promptly investigate and either commence and prosecute an action or furnish the informant with a written statement of reasons for not commencing and prosecuting an action under this part.

History: En. Sec. 4-A, Ch. 111, L. 1935; re-en. Sec. 4193.5, R.C.M. 1935; R.C.M. 1947, 60-405; amd. Sec. 2753, Ch. 56, L. 2009.

82-15-206. Penalty. Any person, firm, company, association, or corporation violating any of the provisions of this part shall be guilty of a misdemeanor and shall be punishable by a fine of not exceeding $500.

History: En. Sec. 5, Ch. 111, L. 1935; re-en. Sec. 4193.6, R.C.M. 1935; R.C.M. 1947, 60-406.

Cross-References

Criminal responsibility of corporations, 45-2-311.
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82-15-207. Liability for civil and exemplary damages. In addition to the penalty above prescribed, any customer of such person, firm, company, association, or corporation may bring a civil action in any county in which such offending person, firm, company, association, or corporation may be doing business and recover thereby not only actual damages for violation of this part but also exemplary damages for such reasonable sum as the jury may deem proper punishment for the unlawful practice of discrimination as herein defined.

History: En. Sec. 6, Ch. 111, L. 1935; re-en. Sec. 4193.7, R.C.M. 1935; R.C.M. 1947, 60-407.

Cross-References

Damages, Title 27, ch. 1, part 2.
When exemplary damages allowed, 27-1-221.
Measure of damages, Title 27, ch. 1, part 3.

TITLE 85

WATER USE

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1. Water Resources.
2. Surface Water and Ground Water.
3. Atmospheric Water — Weather Modification.
Chapter 4 reserved.
5. Water Commissioners and Water Mediators.
6. Water Users' Associations.
7. Irrigation Districts.
8. Drainage Districts.
9. Conservancy Districts.
Chapters 10 through 14 reserved.
15. Dam Safety Act.
16. Wharves and Docks.
Chapters 17 through 19 reserved.
20. Water Compacts.
Chapters 21 through 24 reserved.
25. Columbia River Treaty Account.

Title Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.
Water Pollution Control Advisory Council, 2-15-2107.
Board of Water Well Contractors, 2-15-3307.
Water Courts, Title 3, ch. 7.
County water and sewer districts, Title 7, ch. 13, parts 22 and 23.
Municipal sewage and water systems, Title 7, ch. 13, parts 43 and 44.
Property tax exemptions for certain water projects, 15-6-205, 15-6-206.
Taxation of sewage disposal and domestic water supply systems, 15-7-103.
Recreational use of streams, Title 23, ch. 2, part 3.
Smith River Management Act, Title 23, ch. 2, part 4.
Water well contractors, Title 37, ch. 43.
Aircraft landings and takeoffs from public waters, 67-1-204.
Water quality, Title 75, ch. 5.
Public water supplies, distribution, and treatment, Title 75, ch. 6.
Aquatic ecosystem protections, Title 75, ch. 7.
Flood plain and floodway management, Title 76, ch. 5.
Conservation districts — water conservation, Title 76, ch. 15, part 4.
Water projects on state lands, 77-1-605.
Geothermal resources, 77-4-104.
Streamside management zones, Title 77, ch. 5, part 3.
Protection of water from mining or reclamation projects, 82-4-251.
Water Policy Committee duties, 85-2-105.
Fish and Wildlife, Title 87.
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Stream protection, Title 87, ch. 5, part 5.

CHAPTER 1

WATER RESOURCES

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Part 1
General Provisions

85-1-101. Policy considerations. It is hereby declared as follows:

(1) The general welfare of the people of Montana, in view of the state's population growth and expanding economy, requires that water resources of the state be put to optimum beneficial use and not wasted.

(2) The public policy of the state is to promote the conservation, development, and beneficial use of the state's water resources to secure maximum economic and social prosperity for its citizens.

(3) The state, in the exercise of its sovereign power, acting through the department of natural resources and conservation, shall coordinate the development and use of the water resources of the state so as to effect full utilization, conservation, and protection of its water resources.

(4) The development and utilization of water resources and the efficient, economic distribution thereof are vital to the people in order to protect existing uses and to assure adequate future supplies for domestic, industrial, agricultural, and other beneficial uses.

(5) The water resources of the state must be protected and conserved to assure adequate supplies for public recreational purposes and for the conservation of wildlife and aquatic life.

(6) The public interest requires the construction, operation, and maintenance of a system of works for the conservation, development, storage, distribution, and utilization of water, which construction, operation, and maintenance is a single object and is in all respects for the welfare and benefit of the people of the state.

(7) It is necessary to coordinate local, state, and federal water resource development and utilization plans and projects through a single agency of state government, the department of natural resources and conservation.

(8) The greatest economic benefit to the people of Montana can be secured only by the sound coordination of development and utilization of water resources with the development and utilization of all other resources of the state.

(9) Any attempt to gain control of or speculate on large quantities of ground water of the state of Montana is not in the interest of the people and is to be restricted.

(10) To achieve these objectives and to protect the waters of Montana from diversion to other areas of the nation, it is essential that a comprehensive, coordinated multiple-use water resource plan be progressively formulated, to be known as the "state water plan".

History: En. Sec. 2, Ch. 158, L. 1967; amd. Sec. 119, Ch. 253, L. 1974; R.C.M. 1947, 89-101.2; amd. Sec. 1, Ch. 631, L. 1979.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Protection and improvement of environment — prevention of unreasonable depletion and degradation of natural resources, Art. IX, sec. 1, Mont. Const.

Department of Natural Resources and Conservation, Title 2, ch. 15, part 33.

Recreation, Title 23, ch. 2.

Environmental protection — environmental policy, Title 75, ch. 1.

Water quality, Title 75, ch. 5.

Public water supplies, distribution, and treatment, Title 75, ch. 6.

Aquatic ecosystem protections, Title 75, ch. 7.

Control of state waters for propagation of fish, 87-1-223.

Wildlife protection — stream protection, Title 87, ch. 5, part 5.

85-1-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department:

(a) for the purpose of protecting the department's properties and assets;

(b) to oversee the operation and maintenance of the projects;

(c) to administer contracts and receivables;

(d) to maintain project financial records;

(e) to provide technical assistance for operating, maintaining, and rehabilitating the projects; and

(f) to assist in securing funds for operating, maintaining, and rehabilitating the projects.

(2) "Cost of operation and maintenance" means the costs of operation, maintenance, and routine repairs and the costs incurred by the water users' association or the department in the distribution of water from the project, excluding the department's administrative costs.

(3) "Cost of works" means:

(a) the cost of construction, including any rehabilitation or alteration of the project;

(b) the cost of all lands, property, rights, easements, and franchises acquired that are considered necessary for the construction;

(c) the cost of all water rights acquired or exercised by the department in connection with the works;

(d) the cost of all machinery and equipment, financing charges, and interest prior to and during construction and for a period not exceeding 3 years after the completion of construction;

(e) the cost of engineering and legal services, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project;

(f) administrative expense; and

(g) other expenses that are necessary or incident to the financing authorized in this part and the construction of the works and the placing of the works in operation.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(5) "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies, or associations that have any title or interest in any properties, rights, easements, or franchises to be acquired.

(6) (a) "Private person" means any individual, association, partnership, corporation, or other nongovernmental entity that is not eligible for loans and grants under 85-1-605.

(b) The term does not include a governmental entity, such as an agency, local government, or political subdivision of the state, the United States, or any agency of the United States, or any other governmental entity.

(7) "Project" means any one of the works defined in this section or any combination of works that are physically connected or jointly managed and operated as a single unit.

(8) "Public benefits" means those benefits that accrue from a water development project or activity to persons other than the private grant or loan recipient and that enhance the common well-being of the people of Montana. Public benefits include but are not limited to recreation, flood control, erosion reduction, agricultural flood damage reduction, water quality enhancement, sediment reduction, access to recreation opportunities, and wildlife conservation.

(9) "Renewable resource loan debt service fund" means a separate fund created by 85-1-603 within the debt service fund type of the state treasury, to be used as provided in 85-1-619.

(10) "Renewable resource loan proceeds account" means a separate account created by 85-1-617 within the state special revenue fund of the state treasury to:

(a) finance loans under the provisions of the renewable resource grant and loan program to agencies, local governments, and political subdivisions of the state, to private persons, and to any other eligible recipients; and

(b) purchase liens and operate property, as provided in 85-1-615, from proceeds of bonds issued under part 6 of this chapter.

(11) "Tribal government" means the officially recognized government of an Indian tribe, nation, or other organized group or community that is located in Montana, that exercises self-government powers, and that is recognized as eligible for those services that are provided by the United States to Indians because of their status as Indians.

(12) "Water development activity" means an action or program to protect and enhance water-based recreation or to protect or enhance water resources for the benefit of agriculture, flood control, or other uses, including but not limited to the promotion of efficient use of water in agriculture, the improvement of water quality in agriculture and other nonpoint source uses, the protection and enhancement of water-based recreation, the control of erosion of streambanks and control of sedimentation in rivers and streams, and the provision of greater local and state control of Montana's water resources. Water development activities may provide any combination of marketable and nonmarketable benefits.

(13) "Water development project" means a project as defined in subsection (7), except that water development projects:

(a) are not limited to projects owned or operated by the department; and

(b) for purposes of the renewable resource grant and loan program, must include water development activities.

(14) (a) "Works" means all property and rights, easements, and franchises relating to property and considered necessary or convenient for the operation of the works and all water rights acquired or exercised by the department in connection with those works.

(b) The term includes:

(i) all means of conserving and distributing water, including but not limited to reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines, and waterworks systems; and

(ii) all works for the conservation, development, storage, distribution, and utilization of water, including but not limited to works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, and supplying water for public, domestic, industrial, or other uses and for fire protection.

History: En. Sec. 2, Ch. 35, Ex. L. 1933; amd. Sec. 1, Ch. 95, L. 1935; re-en. Sec. 349.2, R.C.M. 1935; amd. Sec. 1, Ch. 163, L. 1965; amd. Sec. 3, Ch. 158, L. 1967; amd. Sec. 120, Ch. 253, L. 1974; R.C.M. 1947, 89-102(part); amd. Sec. 3, Ch. 505, L. 1981; amd. Sec. 29, Ch. 298, L. 1983; amd. Sec. 1, Ch. 332, L. 1987; amd. Sec. 1, Ch. 491, L. 1989; amd. Sec. 8, Ch. 478, L. 1993; amd. Sec. 71, Ch. 18, L. 1995; amd. Sec. 415, Ch. 418, L. 1995; amd. Sec. 1, Ch. 436, L. 1997; amd. Sec. 14, Ch. 432, L. 2007.

Cross-References

Definition of public use — waters property of state, Art. IX, sec. 3, Mont. Const.
Board of Water Well Contractors, 2-15-3307.
Prescriptive easement not acquired by recreational use of surface waters, 23-2-322.
Water well contractors, Title 37, ch. 43.
Recreational purposes defined, 70-16-301.

85-1-103. Interpretation of title. The object of this title is to promote the prosperity and welfare of the people of Montana through the sound management of the state's water resources, and its provisions are to be given a liberal interpretation.

History: En. Sec. 66, Ch. 146, L. 1909; re-en. Sec. 7262, R.C.M. 1921; re-en. Sec. 7262, R.C.M. 1935; amd. Sec. 38, Ch. 460, L. 1977; R.C.M. 1947, 89-2109.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

85-1-104 through 85-1-110 reserved.

85-1-111. Public ways. Navigable waters and all streams of sufficient capacity to transport the products of the country are public ways for the purposes of navigation and such transportation. This section shall not be construed so as to affect or impair, in any manner, any rights acquired prior to July 1, 1901, by any person, association of persons, or corporation. The right of any person, association of persons, or corporation to take and use any water, as now provided by law, from any stream or streams for the purpose of irrigation or any beneficial or industrial pursuit shall not be abridged.

History: En. Sec. 2570, Pol. C. 1895; amd. Sec. 1, p. 126, L. 1901; re-en. Sec. 1326, Rev. C. 1907; re-en. Sec. 1604, R.C.M. 1921; Cal. Pol. C. Sec. 2348; re-en. Sec. 1604, R.C.M. 1935; R.C.M. 1947, 89-501.

Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.
Interference with navigable water as nuisance, 27-30-101, 45-8-111.
Extent of ownership of land bounded by water, 70-16-201.
Irrigation districts, Title 85, ch. 7.
Navigable waters subject to fishing rights, 87-2-305.

85-1-112. Navigable waters. (1) All lakes wholly or partly within this state which have been meandered and returned as navigable by the surveyors employed by the government of the United States and all lakes which are navigable in fact are hereby declared to be navigable and public waters, and all persons shall have the same rights therein and thereto that they have in and to any other navigable or public waters.

(2) All rivers and streams which have been meandered and returned as navigable by the surveyors employed by the government of the United States and all rivers and streams which are navigable in fact are hereby declared navigable.

History: En. Secs. 1, 2, Ch. 95, L. 1933; re-en. Secs. 3717.1, 3717.2, R.C.M. 1935; R.C.M. 1947, 26-336, 26-337.

Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.
Access to surface waters by public bridge or county road right-of-way, 23-2-312.
Interference with navigable water as nuisance, 27-30-101, 45-8-111.
Extent of ownership of land bounded by water, 70-16-201.
Navigable waters subject to fishing rights, 87-2-305.

85-1-113 through 85-1-120 reserved.

85-1-121. Repealed. Sec. 3, Ch. 706, L. 1983.

History: En. Sec. 1, Ch. 220, L. 1921; re-en. Sec. 7135, R.C.M. 1921; re-en. Sec. 7135, R.C.M. 1935; R.C.M. 1947, 89-846.

85-1-122. Clark Fork River. The waters of the Clark Fork River may be impounded or restrained within the state of Montana for a distance not exceeding 25 miles from the

Idaho-Montana boundary line by a dam located on said river in the state of Idaho and constructed by any person, firm, partnership, or corporation authorized to do business in the state of Montana. Any present or future appropriations of water in the watershed in the state of Montana for irrigation and domestic use above said dam shall have priority over water for power use at said dam.

History: **En. Sec. 1, Ch. 3, L. 1951; R.C.M. 1947, 89-856.**

Part 2
Administration

85-1-201. Rules. The department may adopt from time to time, as necessary or expedient, suitable rules for the administration of this chapter.

History: **En. 89-102.1 by Sec. 121, Ch. 253, L. 1974; R.C.M. 1947, 89-102.1; amd. Sec. 416, Ch. 418, L. 1995.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

85-1-202. Repealed. Sec. 500, Ch. 418, L. 1995.

History: **En. Sec. 2, Ch. 279, L. 1965; amd. Sec. 122, Ch. 253, L. 1974; R.C.M. 1947, 89-103.2.**

85-1-203. State water plan. (1) The department shall gather from any source reliable information relating to Montana's water resources and prepare from that information a continuing comprehensive inventory of the water resources of the state. In preparing this inventory, the department may:

(a) conduct studies;

(b) adopt studies made by other competent water resource groups, including federal, regional, state, or private agencies;

(c) perform research or employ other competent agencies to perform research on a contract basis; and

(d) hold public hearings in affected areas at which all interested parties must be given an opportunity to appear.

(2) The department shall formulate and adopt and amend, extend, or add to a comprehensive, coordinated multiple-use water resources plan known as the "state water plan". The state water plan may be formulated and adopted in sections, with some of these sections corresponding with hydrologic divisions of the state. The state water plan must set out a progressive program for the conservation, development, utilization, and sustainability of the state's water resources and must propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses.

(3) Sections of the state water plan must be completed for the Missouri River basin, the Yellowstone River basin, and the Clark Fork and Kootenai River basins, be submitted to the 2035 legislature, and be updated at least every 20 years. These basinwide plans must include:

(a) an inventory of consumptive and nonconsumptive uses associated with existing water rights;

(b) identified data gaps;

(c) an estimate of the amount of surface and ground water needed to satisfy new future demands;

(d) analysis of the effects of frequent drought and of new or increased depletions on the availability of future water supplies;

(e) proposals for the best means to satisfy existing water rights and new water demands, such as an evaluation of opportunities for storage of water by both private and public entities;

(f) possible sources of water to meet the needs of the state; and

(g) any legislation necessary to address water resource concerns in these basins.

(4) (a) The department shall create a basin advisory council in the Missouri River basin, in the Yellowstone River basin, and in the Clark Fork and Kootenai River basins that is inclusive and representative of all water interests and interests in those basins.

(b) The basin advisory councils must consist of key water interests within the basins, including, on recommendation from relevant water user interest groups, at least one representative each from the following groups or organizations:

(i) agricultural;
(ii) conservation;
(iii) industrial;
(iv) irrigation;
(v) municipal;
(vi) recreational;
(vii) tribal;
(viii) watershed; and
(ix) conservation districts.

(c) Each basin advisory council may have up to 20 members.

(d) Each basin advisory council shall make recommendations to the department on the basinwide plans required by subsection (3).

(e) The department may use existing basin councils as a basin advisory council if the composition and purpose of the existing basin council is consistent with this subsection (4).

(5) Before adopting the entire state water plan or any section of the plan, the department shall hold public hearings across the state, or in an area of the state encompassed by a section of the plan if adoption of a section is proposed. Notice of the hearing or hearings must be published for 2 consecutive weeks in a newspaper of general circulation published in each county encompassed by the proposed plan or section of the plan at least 30 days prior to the hearing.

(6) The legislature, by joint resolution, may revise the state water plan.

(7) The department shall prepare a continuing inventory of the ground water resources of the state. The ground water inventory must be included in the comprehensive water resources inventory described in subsection (1) but must be a separate component of the inventory.

(8) The department shall publish the comprehensive inventory, the state water plan, the ground water inventory, or any part of each, and the department may assess and collect a reasonable charge for these publications.

(9) In developing and revising the state water plan as provided in this section, the department shall consult with the water policy committee established in 5-5-231 and solicit the advice of the water policy committee in carrying out its duties under this section.

History: En. Sec. 5, Ch. 158, L. 1967; amd. Sec. 138, Ch. 253, L. 1974; R.C.M. 1947, 89-132.1(1) thru (5); amd. Sec. 18, Ch. 573, L. 1985; amd. Sec. 1, Ch. 381, L. 1989; amd. Sec. 417, Ch. 418, L. 1995; amd. Sec. 70, Ch. 545, L. 1995; amd. Sec. 1, Ch. 404, L. 2009; amd. Sec. 7, Ch. 122, L. 2015; amd. Sec. 113, Ch. 261, L. 2021; amd. Sec. 1, Ch. 284, L. 2021; amd. Sec. 10, Ch. 460, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 10, Ch. 460, L. 2025. Amendment effective October 1, 2025.

Cross-References

Public participation in governmental operations, Title 2, ch. 3.
Publication of legal notices, Title 18, ch. 7, part 2.
Renewable resource grant and loan program, Title 85, ch. 1, part 6.
Surface water and ground water, Title 85, ch. 2.

85-1-204. Department powers over state water. (1) The department may sell, lease, and otherwise dispose of water impounded under this chapter. The water may be sold for the purpose of irrigation, development of power, watering of stock, or other purposes. The department may also lease water under the state water leasing program established under the provisions of 85-2-141. To the extent that it may be necessary to carry out this chapter and subject to compliance with the other provisions of this chapter, the department has full control of all the water of the state not under the exclusive control of the United States and not appropriated for private use. The department shall take the necessary actions to appropriate and conserve the water for the use of the people. The authority of the department conferred by this chapter extends and applies to rights to the natural flow of the water of this state that it may acquire by condemnation pursuant to Title 70, chapter 30, or by purchase, exchange, appropriation, or agreement.

(2) For the purpose of regulating the diversion of water, the department may enter upon the means and place of use of all appropriators for making surveys of respective rights and seasonal needs.

(3) The department may take into consideration the decrees of the courts of this state having jurisdiction that purport to adjudicate the water of a stream or its tributaries. A fair,

reasonable, and equitable reconciliation must be made between the claimants asserting rights under different decrees and between decreed rights and asserted rights of appropriation not adjudicated by a court.

(4) The department may hold hearings relating to the rights of respective claimants after first giving the notice that it considers appropriate. The department shall make findings of the date and quantity of appropriation and use of all claimants that the department recognizes and observes in diverting the water that the department is appropriated. The department may measure and distribute the water to the holder of the recognized appropriation right under agreed-upon terms.

(5) The department, when engaged in controlling and dividing the natural flow of a stream under the authority granted by this chapter, is exercising a police power of the state, and water commissioners appointed by any court may not deprive the department of any of the water appropriated or administered under agreement with respective water right holders. The holder of a prior right who contends that the department is not recognizing and respecting the appropriation may resort to a court for the purpose of determining whether or not the rights of the claimant have been invaded, and the department shall observe the terms of the final decree.

(6) When the department impounds or acquires the right of appropriation of the water of a stream, it may divert or authorize the diversion at a point on the stream or a portion of the stream when it is done without injury to a prior appropriator.

History: Ap. p. Sec. 21, Ch. 35, Ex. L. 1933; re-en. Sec. 349.22, R.C.M. 1935; amd. Sec. 136, Ch. 253, L. 1974; amd. Sec. 1, Ch. 255, L. 1975; amd. Sec. 4, Ch. 460, L. 1977; Sec. 89-125, R.C.M. 1947; Ap. p. Sec. 14, Ch. 35, Ex. L. 1933; re-en. Sec. 349.15, R.C.M. 1935; amd. Sec. 43, Ch. 177, L. 1965; amd. Sec. 132, Ch. 253, L. 1974; Sec. 89-118, R.C.M. 1947; R.C.M. 1947, 89-118(part), 89-125(1) thru (6); amd. Sec. 2, Ch. 573, L. 1985; amd. Sec. 13, Ch. 301, L. 1995; amd. Sec. 418, Ch. 418, L. 1995; amd. Sec. 103, Ch. 125, L. 2001.

Cross-References

Bonds of state officers and employees, 2-9-601, 2-9-602.
Development of state lands, Title 77, ch. 1, part 6.
Water rights in connection with geothermal development, 77-4-108.
Hydroelectric resources, Title 77, ch. 4, part 2.
Department assistance to Water Judges, 85-2-243.
Right to appropriate, 85-2-301.
Reservation of waters, 85-2-316.

85-1-205. Acquisition of water in federal reservoirs. The department may acquire water or water storage by purchase option or agreement with the federal government from any federal reservoir for the purpose of sale, rent, or distribution for any beneficial use. In such cases, the department is not required to construct any diversion or appropriation facilities or works, and it may sell, rent, or distribute such water at such rates and under such terms and conditions as it considers appropriate.

History: En. Sec. 21, Ch. 35, Ex. L. 1933; re-en. Sec. 349.22, R.C.M. 1935; amd. Sec. 136, Ch. 253, L. 1974; amd. Sec. 1, Ch. 255, L. 1975; amd. Sec. 4, Ch. 460, L. 1977; R.C.M. 1947, 89-125(7); amd. Sec. 1, Ch. 706, L. 1983; amd. Sec. 14, Ch. 573, L. 1985.

Cross-References

Concurrent jurisdiction over Fort Peck Dam ceded to United States — reservation of rights to state, 2-1-209.

85-1-206. Construction of works by department. (1) The department may construct works, with the cost of the construction to be paid wholly by means of or with the proceeds of revenue bonds or of a grant or loan to aid in financing the construction from the United States or any instrumentality or agency of the United States and other funds provided for the construction. Before constructing a project, the department shall estimate the cost of the project, the cost of operation and maintenance, and the revenue to be derived from the operation of the project. A project may not be constructed unless, according to the estimates, the revenue to be derived will be sufficient to pay the cost of operation and maintenance and the principal and interest of loans or revenue bonds issued for the cost of the project. In connection with the issuance of revenue bonds, the failure of the department to make the estimates required by this section or to make them in proper form does not affect the validity or enforceability of the bonds or of the trust indenture, resolution, or other security for the bonds.

(2) If the bid of the lowest responsible bidder on any capital improvement associated with public works exceeds the department estimates of the cost of the improvements by more than 5%, the department shall obtain approval from the water users' association, whenever

an association is involved, before the bid is accepted. Capital improvements of an emergency nature necessary to protect life or property or to supply immediate needs for water do not require approval of the water users' association.

(3) A purpose of this chapter is to meet, so far as possible, a statewide need for the conservation and use of water through the construction and operation of projects. The projects to be constructed must qualify as parts of the statewide program and must be approved by the department upon the showing of prospective ability to meet, through the sale of water or other services, the cost of operation and maintenance and the principal and interest of loans and revenue bonds issued to finance the construction. The failure to determine the prospective ability of a project does not affect the validity or enforceability of the bonds or of the trust indenture, resolution, or other security for the bonds.

History: **En. Sec. 5, Ch. 35, Ex. L. 1933; amd. Sec. 2, Ch. 95, L. 1935; re-en. Sec. 349.5, R.C.M. 1935; amd. Sec. 1, Ch. 278, L. 1973; amd. Sec. 124, Ch. 253, L. 1974; amd. Sec. 1, Ch. 460, L. 1977; R.C.M. 1947, 89-105(1) thru (3); amd. Sec. 2, Ch. 332, L. 1987; amd. Sec. 14, Ch. 301, L. 1995; amd. Sec. 419, Ch. 418, L. 1995.**

Cross-References

Federal assistance management, Title 17, ch. 3, part 1.
Bond issues, Title 17, ch. 5.
Bid security, Title 18, ch. 1, part 2.
State construction contracts, Title 18, ch. 2.
Water users' associations, Title 85, ch. 6, part 1.

85-1-207. Determination of costs of works. The department, in determining how the cost of works must be met, shall consider the value of public benefits and the repayment capacity of the water users. A state grant may be provided by the department to compensate for the value of public benefits, to minimize the liabilities of the state of Montana, and to pay the difference between the water users' repayment capacity and the cost of works.

History: **En. Sec. 2, Ch. 35, Ex. L. 1933; amd. Sec. 1, Ch. 95, L. 1935; re-en. Sec. 349.2, R.C.M. 1935; amd. Sec. 1, Ch. 163, L. 1965; amd. Sec. 3, Ch. 158, L. 1967; amd. Sec. 120, Ch. 253, L. 1974; R.C.M. 1947, 89-102(part); amd. Sec. 3, Ch. 332, L. 1987.**

Cross-References

Recreation, Title 23, ch. 2.
Aquatic ecosystem protections, Title 75, ch. 7.
Water conservation and flood control projects, Title 76, ch. 5, part 11.
Irrigation districts, Title 85, ch. 7, part 1.
Dam safety, Title 85, ch. 15.
Wildlife protection, Title 87, ch. 5.

85-1-208. Construction across streams, highways, or other obstacles. (1) The department may construct irrigation works across any stream of water, watercourse, streets, avenues, highways, railways, canals, ditches, or flumes in such manner as to afford security to life and property. The department shall restore the same, when so crossed or intersected, to its former state, as near as may be, so as not to destroy its usefulness. A company whose railroads are intersected or crossed by the works shall unite with the department in forming the intersection and crossing. If the railroad company and the department or the owners and controllers of the property, thing, or franchise so to be crossed cannot agree upon the amount to be paid therefor or the points or the manner of the crossing or intersections, the amount shall be ascertained and determined in all respects as herein provided in respect to taking of land for public use.

(2) This section does not require the payment to the state or any subdivision thereof of a sum for the right to cross a public highway with the works. A right-of-way is hereby given, dedicated, and set apart to locate, construct, and maintain the works over and through the lands which are the property of this state.

History: **En. Sec. 1, Ch. 69, L. 1937; amd. Sec. 125, Ch. 253, L. 1974; R.C.M. 1947, 89-106.**

Cross-References

Highway crossing railroad, canal, or ditch, 60-4-110.
Duty of railroads to construct drains and ditches, 69-14-240.
Eminent domain, Title 70, ch. 30.
The Natural Streambed and Land Preservation Act of 1975, Title 75, ch. 7, part 1.
Rights-of-way for irrigation works, 85-7-1909.

85-1-209. Acquisition of property by department. (1) The department may acquire by purchase or exchange, upon terms and conditions and in a manner it considers proper, and may acquire by condemnation, in accordance with Title 70, chapter 30, any land, rights, water rights, easements, franchises, and other property considered necessary for the construction, operation, and maintenance of works. Title to property purchased or condemned must be taken in the name of the department. The department is under no obligation to accept and pay for any property condemned under this chapter except from the funds provided by this chapter. In any proceedings to condemn, orders may be made by the court that has jurisdiction of the suit, action, or proceeding that may be warranted by law and the facts.

(2) In a condemnation proceeding brought under Title 70, chapter 30, for the purpose of carrying out this chapter, all persons interested in the title of or holding liens upon the property sought to be taken, as disclosed by the public records, must be made parties and the court in the action shall partition and distribute the damages awarded, if any, among those persons. If there is controversy between the condemnees, the court may direct the amount of the damage awarded to be paid into court to be allocated in further appropriate proceedings either at law or in equity.

(3) Taking possession of the property sought to be condemned may not be delayed by reason of any dispute between the rival claimants or the failure to join any of them as a party to the condemnation proceedings.

(4) If water rights are acquired or exercised by the department in connection with two or more works or projects, the department by order shall apportion or allocate to each of the works or projects the part of the water rights that the department determines is necessary. Upon the adoption of the order, the water rights are considered a part of each of the works or projects to the extent that the water rights have been apportioned or allocated to the works or projects.

History: (1) thru (3)En. Sec. 4, Ch. 35, Ex. L. 1933; re-en. Sec. 349.4, R.C.M. 1935; amd. Sec. 123, Ch. 253, L. 1974; Sec. 89-104, R.C.M. 1947 (4)En. Sec. 2, Ch. 3, Ex. L. 1933; amd. Sec. 1, Ch. 95, L. 1935; re-en. Sec. 349.2, R.C.M. 1935; amd. Sec. 1, Ch. 163, L. 1965; amd. Sec. 3, Ch. 158, L. 1967; amd. Sec. 120, Ch. 253, L. 1974; Sec. 89-102, R.C.M. 1947; R.C.M. 1947, 89-102(7), 89-104; amd. Sec. 15, Ch. 301, L. 1995; amd. Sec. 420, Ch. 418, L. 1995; amd. Sec. 104, Ch. 125, L. 2001.

Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.; Title 70, ch. 30.

85-1-210. Disposal of property by department. In addition to the powers conferred upon the department to sell, lease, or otherwise dispose of water for the purpose of irrigation, development of power, watering of stock, or other purposes, the department may sell, lease, or otherwise dispose of water from its waterworks systems for public, domestic, industrial, and other uses and for fire protection. The department may sell or otherwise dispose of a water project, after the discharge of all of the bonds issued to finance the construction or acquisition of the project, if any, and of all interest on the bonds, costs, and expenses incurred in connection with any action or proceeding by or on behalf of the holders of the bonds. Except for a water project for which no water purchase contracts are managed by the department and for which no money is collected by the department, the department shall make a determination of the market value of a water project prior to its sale or other disposition. The department's determination of market value must consider all liens, encumbrances, and other limitations on the water project.

History: En. Sec. 6, Ch. 95, L. 1935; re-en. Sec. 349.24, R.C.M. 1935; amd. Sec. 137, Ch. 253, L. 1974; R.C.M. 1947, 89-127; amd. Sec. 1, Ch. 156, L. 1981; amd. Sec. 1, Ch. 305, L. 1987; amd. Sec. 16, Ch. 301, L. 1995; amd. Sec. 421, Ch. 418, L. 1995.

Cross-References

Irrigation districts, Title 85, ch. 7.

Drainage districts — bonds and revenue, Title 85, ch. 8, part 6.

Conservancy districts — finance, Title 85, ch. 9, part 6.

85-1-211. Management of property — water contracts. (1) Subject to this chapter, the department may fix and establish the prices, rates, and charges at which the resources and facilities made available under this chapter may be sold and disposed of and enter into contracts and agreements and do those things that in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this chapter, under general rules and upon terms, limitations, and conditions as it prescribes.

(2) The department shall enter into the contracts and fix and establish the prices, rates, and charges to provide at all times funds that are sufficient to pay all costs of operation and maintenance of the works authorized by this chapter, together with necessary repairs to the

works, and that will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans as they severally become due and payable.

(3) This chapter does not authorize any change, alteration, or revision of the rates, prices, or charges as established by a contract entered into under this chapter except as provided by the contract.

(4) A contract made by the department for the sale of water, use of water, water storage, or other service or for the sale of property or facilities must provide that, in the event of a failure or default in the payment of money specified in the contract to be paid to the department, the department may, upon notice as is prescribed in the contract, terminate the contract and all obligations under the contract. The act of the department in ceasing on default to furnish or deliver water, use of water, water storage, or other service under the contract does not deprive the department of or limit a remedy provided by the contract or by law for the recovery of money due or that may become due under the contract.

(5) (a) The department may sell, transfer to water users' associations, abandon, lease or rent, or otherwise dispose of any rights-of-way, easements, properties, or interests or otherwise take and receive the income or profit and revenue from property without regard to other laws providing for the disposition of state property. Except for a water project for which no water management contracts are managed by the department and for which no money is collected by the department, prior to the department's sale, transfer, or other disposition, a determination must be made by the department as to the market value of the rights-of-way, easements, properties, or interests to be sold, transferred, abandoned, or otherwise disposed of. The department's determination of market value must consider all liens, encumbrances, and other limitations on the project properties or interests. In the disposal of a project, the department shall comply with the provisions of 85-6-109 and shall give purchase preference to existing water users' associations operating and maintaining the project proposed for disposal.

(b) Subject to the provisions of subsection (5)(a), the department shall attempt to dispose of the Willow Creek Dam project by June 30, 2015.

(6) An employee or agent of the department authorized by the director may enter upon any land to carry out the purposes of this section, including but not limited to entry to make an inspection of the project that the department considers necessary, entry to salvage or remove project property, and entry to make physical alterations to project property. The department shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to property.

History: En. Sec. 11, Ch. 35, Ex. L. 1933; re-en. Sec. 349.12, R.C.M. 1935; amd. Sec. 1, Ch. 459, L. 1973; amd. Sec. 129, Ch. 253, L. 1974; amd. Sec. 3, Ch. 73, L. 1977; amd. Sec. 2, Ch. 460, L. 1977; R.C.M. 1947, 89-115(1), (3), (5); amd. Sec. 2, Ch. 156, L. 1981; amd. Sec. 2, Ch. 305, L. 1987; amd. Sec. 1, Ch. 425, L. 1991; amd. Sec. 1, Ch. 53, L. 1993; amd. Sec. 17, Ch. 301, L. 1995; amd. Sec. 422, Ch. 418, L. 1995; amd. Sec. 1, Ch. 120, L. 1999; amd. Sec. 1, Ch. 144, L. 2011; amd. Sec. 1, Ch. 275, L. 2015.

Cross-References

Bond issues, Title 17, ch. 5.
Contracts generally, Title 28, ch. 2, 3.

85-1-212. Repealed. Sec. 500, Ch. 418, L. 1995.

History: En. Sec. 11, Ch. 35, Ex. L. 1933; re-en. Sec. 349.12, R.C.M. 1935; amd. Sec. 1, Ch. 459, L. 1973; amd. Sec. 129, Ch. 253, L. 1974; amd. Sec. 3, Ch. 73, L. 1977; amd. Sec. 2, Ch. 460, L. 1977; R.C.M. 1947, 89-115(4).

85-1-213. Institution of court actions by department. The department may institute in any court any actions, suits, and special proceedings necessary to enable it to acquire, own, and hold title to lands for dam sites, reservoir sites, water rights, rights-of-way for diversion and distributing canals, and lateral ditches and other means of distribution of water and may also in any court institute, maintain, and prosecute to final determination actions, suits, and special proceedings necessary to have the water rights adjudicated upon any stream or source of water supply from which is derived the water for the reservoir, diversion and distributing canals, lateral ditches, and other means of distribution of the water. The department may join owners of waters appropriated by a person, association, or corporation from the streams of the state so that adjudication may be had of all surplus water upon all the streams and sources of water supply of a project constructed by the department. All costs and expenses of the actions, suits, or special proceedings shall be paid by the department out of funds provided under this chapter.

History: En. Sec. 14, Ch. 35, Ex. L. 1933; re-en. Sec. 349.15, R.C.M. 1935; amd. Sec. 43, Ch. 177, L. 1965; amd. Sec. 132, Ch. 253, L. 1974; R.C.M. 1947, 89-118(2).

Cross-References

Bonding of state employees, 2-9-602.
Water resources — finance, Title 85, ch. 1, part 3.
Adjudication of water rights, Title 85, ch. 2, part 2.

85-1-214. Exercise of department powers — scope of jurisdiction. The department may exercise any of its powers in:

(1) an adjoining state, unless the exercise of that power is not permitted under the laws of that state or of the United States;

(2) a national forest or public domain of the United States adjoining or located in the state of Montana, unless the exercise of those powers is not permitted under the laws of the United States;

(3) an adjoining country, unless the exercise of those powers is not permitted under the laws of that country or of the United States or under the treaties between that country and the United States.

History: En. Sec. 5, Ch. 35, Ex. L. 1933; amd. Sec. 2, Ch. 95, L. 1935; re-en. Sec. 349.5, R.C.M. 1935; amd. Sec. 1, Ch. 278, L. 1973; amd. Sec. 124, Ch. 253, L. 1974; amd. Sec. 1, Ch. 460, L. 1977; R.C.M. 1947, 89-105(4).

Cross-References

Disclaimer of jurisdiction over Indian lands, Art. I, Mont. Const.
Jurisdiction in federal enclaves, 2-1-201.
Consent to purchase of lands by United States for national forest purposes — jurisdiction, 2-1-210.

85-1-215. Department duties — records and operations. The department shall keep accounting records of each project and by July 1 of each year prepare a financial statement showing the financial status of each project. All books and papers pertaining to matters provided for in this chapter shall at all reasonable times be open to the inspection of an interested party or citizen of the state. Except as otherwise provided in this chapter, the department has full charge and control of the construction, operation, and maintenance of the works and the collection of all rates, charges, and revenue from them. The department shall proceed immediately with the construction of the works as soon as funds are made available and shall complete the works as rapidly as possible.

History: En. Sec. 14, Ch. 35, Ex. L. 1933; re-en. Sec. 349.15, R.C.M. 1935; amd. Sec. 43, Ch. 177, L. 1965; amd. Sec. 132, Ch. 253, L. 1974; R.C.M. 1947, 89-118(part); amd. Sec. 18, Ch. 301, L. 1995.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Public records, Title 2, ch. 6.

85-1-216. Limitations on liabilities and obligations. No liability or obligation shall be incurred under this chapter beyond the extent to which money is provided under this chapter.

History: En. Sec. 16, Ch. 35, Ex. L. 1933; re-en. Sec. 349.17, R.C.M. 1935; amd. Sec. 79, Ch. 147, L. 1963; amd. Sec. 134, Ch. 253, L. 1974; R.C.M. 1947, 89-120(part).

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.
Water resources — finance, Title 85, ch. 1, part 3.

85-1-217. Restoration and repair of damaged property. All public or private property damaged or destroyed in carrying out the powers granted under this chapter shall be restored or repaired and placed in their original condition, as nearly as practicable, or adequate compensation made therefor out of funds provided by this chapter.

History: En. Sec. 16, Ch. 35, Ex. L. 1933; re-en. Sec. 349.17, R.C.M. 1935; amd. Sec. 79, Ch. 147, L. 1963; amd. Sec. 134, Ch. 253, L. 1974; R.C.M. 1947, 89-120(part).

Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.; Title 70, ch. 30.

85-1-218. Employment of county surveyors. Whenever deemed practical the department may employ county surveyors in the assistance and preparation of surveys and investigations conducted by the department.

History: En. Sec. 2, Ch. 169, L. 1935; re-en. Sec. 349.64, R.C.M. 1935; amd. Sec. 80, Ch. 147, L. 1963; amd. Sec. 154, Ch. 253, L. 1974; R.C.M. 1947, 89-402(part).

Cross-References

Office of County Surveyor, Title 7, ch. 4, part 28.

85-1-219. State-owned works — department approval — bids — procurement of goods and services. (1) For all state-owned works constructed, repaired, altered, improved, maintained, rehabilitated, or reconstructed, the department shall:

(a) review and approve all plans and working drawings prepared by engineers or architects, if any;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all money;

(c) solicit, accept, and reject bids and award all contracts to the lowest qualified bidder, considering conformity with specifications and terms and reasonableness of bid amount;

(d) review and approve all change orders;

(e) accept the works when completed according to approved plans and specifications.

(2) Except as provided in subsection (3), the department shall solicit sealed, competitive bids before awarding a contract under subsection (1) and may award a contract only after receipt of at least one bid, if reasonably available.

(3) The department may negotiate a contract, without competitive bidding, with a contractor qualified to do business in Montana if:

(a) the department rejects all bids for the work;

(b) an emergency threatening life or property exists;

(c) an exigency exists; or

(d) the cost of goods, nonconstruction services, or professional services is $15,000 or less.

(4) (a) The provisions of Title 18, chapter 2, parts 2 through 4, apply to contracts awarded for construction under this section.

(b) The requirements of Title 18, chapter 4, do not apply to contracts for which the cost of goods or nonconstruction services is $15,000 or less.

(c) (i) Except as provided in subsection (4)(c)(ii), the department may contract for professional services by direct negotiation when the cost of professional services covered by the contract does not exceed $15,000.

(ii) The department may contract for architectural, engineering, and land surveying services by direct negotiation when the cost of the services covered by the contract does not exceed the limits provided in Title 18, chapter 8, part 2.

(iii) The department may not separate service contracts or split or break projects for the purpose of circumventing the provisions of Title 18, chapter 8, part 2.

History: **En. Sec. 1, Ch. 498, L. 1985; amd. Sec. 1, Ch. 382, L. 2001; amd. Sec. 2, Ch. 162, L. 2003; amd. Sec. 1, Ch. 136, L. 2023.**

Cross-References

Bond issues, Title 17, ch. 5.

Bid security, Title 18, ch. 1, part 2.

85-1-220. State water project hydroelectric power generation special revenue account created — revenue allocated. (1) There is a state water project hydroelectric power generation special revenue account within the state special revenue fund established in 17-2-102.

(2) Except as provided in the applicable bond resolution, all revenue derived from hydroelectric power generation at state water conservation projects under Title 85, chapter 1, must be paid into this account as received.

(3) The revenue received under this section must be used to repair and rehabilitate state-owned water projects and works and to pay the cost of financing those activities.

(4) The funds deposited in the state water project hydroelectric power generation special revenue account under this section but not appropriated during the biennium and money appropriated from the account but not expended during the biennium for which it is appropriated must remain in the account for future appropriation under this section and may not be appropriated from the account except as authorized under this section.

History: **En. Sec. 1, Ch. 370, L. 1991; amd. Sec. 62, Ch. 422, L. 1997.**

Cross-References

Sale of power and allocation of revenue, 85-1-510.

85-1-221. Contracts with the United States. The department may enter into contracts and leases with the United States, its instrumentalities or agencies, for the purpose of financing the construction of any works authorized by this chapter and may in those contracts or leases authorize the United States, its instrumentalities, or agencies to supervise and approve the construction, maintenance, and operation of the works or any project or portion thereof, until such times as any money expended, advanced, or loaned by said United States, its instrumentalities, or agencies and agreed to be repaid thereto by the department is fully repaid. It is a purpose and intent of this chapter that the department may accept cooperation from the United States, its instrumentalities, and agencies in the construction, maintenance, and operation and in financing the construction of any works authorized by this chapter, and the department may do all things necessary in order to avail itself of that aid, assistance, and cooperation under federal legislation now or hereafter enacted by congress.

History: En. Sec. 13, Ch. 35, Ex. L. 1933; re-en. Sec. 349.14, R.C.M. 1935; amd. Sec. 131, Ch. 253, L. 1974; R.C.M. 1947, 89-117.

Cross-References

Federal assistance management, Title 17, ch. 3, part 1.
Irrigation districts — relations with United States, 85-7-1906.
Montana Dam Safety Act — exemption of federal structures, 85-15-107.

85-1-222. Conformity to federal regulations authorized. For the purpose of obtaining financial aid from the United States of America, the department may adjust the plans and operation of a project, created under this chapter, to conform to the laws and regulations of the federal government and the supervision of any agency constituted under that authority and may exercise those powers whenever conferred.

History: En. Sec. 20, Ch. 35, Ex. L. 1933; amd. Sec. 135, Ch. 253, L. 1974; R.C.M. 1947, 89-124.

Cross-References

Federal revenue and endowments, Title 17, ch. 3.
Irrigation districts — relations with United States, 85-7-1906.

85-1-223. Negotiations with other states by the department. The department may negotiate with the duly constituted authorities or agencies of other states and of the United States in the preparation of interstate compacts or agreements governing the use, distribution, and allocation of the water of any stream or streams flowing from Montana into such other states or flowing from such other states into Montana. It shall cooperate with other states and with the United States in making the necessary studies and obtaining the data necessary to the preparation of the compacts. This authority and the duties hereby imposed are limited to the preparation and proposal of the compact and the compact or agreement is not binding upon the state of Montana until approved by the legislature of Montana and the legislatures of the other state or states involved in the compact.

History: En. Sec. 1, Ch. 27, Ex. L. 1933; re-en. Sec. 1956.1, R.C.M. 1935; amd. Sec. 2, Ch. 280, L. 1965; Sec. 81-2009, R.C.M. 1947; amd. and redes. 89-142 by Sec. 112, Ch. 253, L. 1974; R.C.M. 1947, 89-142.

Cross-References

Reserved Water Rights Compact Commission, 2-15-212.
Yellowstone River Basin — surface water and ground water, Title 85, ch. 2, part 6.
Indian and federal water rights, Title 85, ch. 2, part 7.
Yellowstone River Compact, Title 85, ch. 20, part 1.
Fort Peck-Montana Compact, Title 85, ch. 20, part 2.

85-1-224. Contracts with state agencies and counties. (1) A state agency or the boards of county commissioners having jurisdiction over any lands which may require the use of any water or water rights owned or controlled by the department or the United States or its agencies may enter into:

(a) such contracts as are necessary with the department, the United States, or agencies of the United States or others for the purchase of water or water rights needed for those lands; and

(b) any contracts as necessary or expedient, similar to contracts executed by individuals or others, to secure for the state, state institutions, counties, and state school and county lands the benefits of the water or water rights, which obligations may be similar to those of persons who become stockholders in corporations or who may agree to purchase and pay for water for irrigation purposes.

(2) These contracts may include agreements that the state and counties shall be subject to the same charges and payments as are other water users within the projects; however, none of those charges, payments, or costs shall constitute a lien against the state's interest in the lands.

(3) The obligations provided for in this section to be incurred upon behalf of the counties and the state shall not be in the nature of general obligations by either said counties or the state of Montana but shall constitute liens only upon such water or water rights purchased for the benefit of such lands.

History: **(1), (2)En. Sec. 2, Ch. 97, L. 1935; re-en. Sec. 349.37, R.C.M. 1935; amd. Sec. 139, Ch. 253, L. 1974; Sec. 89-140, R.C.M. 1947; (3)En. Sec. 3, Ch. 97, L. 1935; re-en. Sec. 349.38, R.C.M. 1935; Sec. 89-141, R.C.M. 1947; R.C.M. 1947, 89-140, 89-141.**

Cross-References

County contracts, Title 7, ch. 5, part 23.
Reservation of waters, 85-2-316.
Transfer of appropriation right, 85-2-403.
Irrigation districts — United States contracts — loans, sinking fund, and investment, 85-7-1951.
Irrigation districts — United States contracts — court approval required, 85-7-1957.
Irrigation districts — power to contract with United States cumulative, 85-7-1958.
Conservancy districts — participation in federal programs, 85-9-409.

Part 3
Finance

Part Cross-References

Bond issues, Title 17, ch. 5.

85-1-301. Water conservation revenue bonds. (1) The department may provide, by resolution, at one time or from time to time, for the issuance of water conservation revenue bonds of the state for the purpose of paying the cost, of any one or more public works. The principal and interest of the bonds are payable solely from the special fund provided for payment. The bonds must mature at the time or times, not more than 40 years from their date or dates, that may be fixed by the resolution but may be made redeemable before maturity at the option of the state, to be exercised by the department, at the price or prices and under the terms and conditions that may be fixed by the department prior to the issuance of the bonds. The department shall determine the rate of interest the bonds shall bear, the time or times of payment of interest, the form of the bonds and the interest coupons to be attached to the bonds, and the manner of executing the bonds and coupons and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or outside of the state.

(2) Provisions may be made for the registration of any of the bonds in the name of the owner as to principal alone or as to both principal and interest. The bonds authorized under the provisions of this section and 85-1-303 may be issued and sold from time to time and in amounts that may be determined by the department, and the department may sell the bonds in a manner and for a price as it may determine to be for the best interests of the state. The proceeds of the bonds must be used solely for the payment of the cost of the works and must be checked out in the manner and under the restrictions, if any, that the department may provide.

(3) Each resolution providing for the issuance of bonds must set forth the project or projects for which the bonds are to be issued, and the bonds authorized by each resolution constitute a separate series. The bonds of each series must be identified by a series letter or letters and may be sold and delivered at one time or from time to time.

History: **En. Sec. 6, Ch. 35, Ex. L. 1933; re-en. Sec. 349.6, R.C.M. 1935; amd. Sec. 11-156, Ch. 264, L. 1963; R.C.M. 1947, 89-109(1), (3), (5); amd. Sec. 45, Ch. 505, L. 1981; amd. Sec. 423, Ch. 418, L. 1995.**

Cross-References

Bond issues, Title 17, ch. 5.
Conservancy districts — finance, Title 85, ch. 9, part 6.

85-1-302. Limitations on state liability. All bonds issued under 85-1-301 and 85-1-303 shall contain a statement on their face that the state shall not be obligated to pay the same or the interest thereon except from the special fund hereinafter set forth. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes, the same as if they had remained in office until such delivery. All such bonds shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities. Such bonds shall not constitute or be a debt, liability, or obligation of the state and shall be secured only by the revenues of such works and the funds received from the sale or disposal of water and from the operation, lease, sale, or other disposition of the works, property, and facilities to be acquired out of the proceeds of such bonds.

History: En. Sec. 6, Ch. 35, Ex. L. 1933; re-en. Sec. 349.6, R.C.M. 1935; amd. Sec. 11-156, Ch. 264, L. 1963; R.C.M. 1947, 89-109(2).

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.
U.C.C. — investment securities, Title 30, ch. 8.

85-1-303. Procedure in case of insufficient bond proceeds. If the proceeds of the bonds, by error of calculation or otherwise, are less than the cost of the works, additional bonds may in like manner be issued to provide the amount of the deficit and, unless otherwise provided in the trust indenture or in the resolution authorizing the bonds, are considered to be of the same issue and are entitled to payment from the same fund, without preference or priority of the bonds first issued for the same works. If the proceeds of bonds issued for the works exceed the cost of the works, the surplus must be paid into the fund provided for the payment of principal and interest of the bonds. Prior to the preparation of definitive bonds, the department may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things that are specified and required by this chapter or by the constitution of the state.

History: En. Sec. 6, Ch. 35, Ex. L. 1933; re-en. Sec. 349.6, R.C.M. 1935; amd. Sec. 11-156, Ch. 264, L. 1963; R.C.M. 1947, 89-109(4); amd. Sec. 424, Ch. 418, L. 1995.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.
Investment of public funds, Art. VIII, sec. 13, Mont. Const.
Refunding bonds, Title 17, ch. 5, part 3.

85-1-304. Lien upon bond proceeds. All moneys received from any bonds issued pursuant to 85-1-301 and 85-1-303 shall be applied solely to the payment of the cost of the works or to the appurtenant debt service fund and to the "administration fund", as hereinafter provided, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the holders of the bonds or the trustee hereinafter provided for in respect of such bonds.

History: En. Sec. 7, Ch. 35, Ex. L. 1933; R.C.M. 1947, 89-110; amd. Sec. 30, Ch. 298, L. 1983.

Cross-References

Fund structure, 17-2-102.
Liens, Title 71, ch. 3.

85-1-305. Use of trust indenture to secure bonds. In the discretion of the department, a series of the bonds may be secured by a trust indenture by and between the department and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state. Each trust indenture or an executed counterpart must be filed in the office of the secretary of state. The filing of a trust indenture or an executed counterpart in the office of the county clerk of the county in which the property covered by the trust indenture is located is constructive notice of its contents to all persons from the time of the filing, and the recording of the trust indenture or its contents is not necessary.

History: En. Sec. 8, Ch. 35, Ex. L. 1933; amd. Sec. 3, Ch. 95, L. 1935; re-en. Sec. 349.8, R.C.M. 1935; amd. Sec. 126, Ch. 253, L. 1974; R.C.M. 1947, 89-111(1); amd. Sec. 425, Ch. 418, L. 1995.

Cross-References

U.C.C. — secured transactions, Title 30, ch. 9A.
Banks and trust companies, Title 32, ch. 1.
Trust indentures — applicable laws, 71-1-112.

85-1-306. Provisions for protecting bondholders. Either the resolution providing for the issuance of bonds or the trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the state and the department in relation to the acquisition, construction, improvement, maintenance, operation, repair, and insurance of the works and the custody, safeguarding, and application of all money. It may provide that the works must be acquired, constructed, or partly acquired and partly constructed and paid for under the supervision and approval of consulting engineers employed or designated by the department and satisfactory to the original purchasers of the bonds issued for the works, or to their successors, assigns, or nominees, who may be given the right to require that security given by contractors and by any depositary of the proceeds of the bonds or receipts and revenue of the works or other money pertaining to the works must be satisfactory to the purchasers, successors, assigns, or nominees. The resolution or indenture may set forth the rights and remedies of the bondholders and trustee, restricting the individual rights of action of bondholders as is customary in trust indentures, deeds of trusts, and mortgages securing bonds or debentures of corporations. The enumeration of particular powers granted by this section may not be construed to impair any general grant of power contained in this chapter. All expenses incurred in carrying out the trust indenture may be treated as a part of the cost of maintenance, operation, and repairs of the works affected by the indenture.

History: **En. Sec. 8, Ch. 35, Ex. L. 1933; amd. Sec. 3, Ch. 95, L. 1935; re-en. Sec. 349.8, R.C.M. 1935; amd. Sec. 126, Ch. 253, L. 1974; R.C.M. 1947, 89-111(2); amd. Sec. 426, Ch. 418, L. 1995.**

Cross-References

Bonds — validation, 17-5-203.

Public contracts — bid security, Title 18, ch. 1, part 2.

85-1-307. Provisions to secure payment of bonds. In connection with the issuance of the bonds for the purpose of paying in whole (or as supplemented by a grant from the United States or any instrumentality or agency of the United States) the cost of the works or project or in order to secure the payment of the bonds, the department may:

(1) pledge all or any part of the income, profit, and revenue of the works or project and all money received from the sale or disposal of water, use of water, water storage, or other service and from the operation, lease, sale, or other disposition of all or any part of the works or project and covenant to pay the income, profit, and revenue into the appropriate water fund and debt service fund;

(2) covenant against pledging all or any part of the income, profit, and revenue of the works or project and all money received from the sale or disposal of water, use of water, water storage, or other service and from the operation, lease, sale, or other disposition of all or any part of the works or project;

(3) covenant against mortgaging all or any part of the works or project or against permitting or suffering any lien on the works or project;

(4) covenant to fix and establish prices, rates, and charges for water and other services made available in connection with the works or project to provide at all times funds that will be sufficient to:

(a) pay all costs of operation and maintenance of the works or project, together with necessary repairs to the works or project;

(b) meet and pay the principal and interest of all the bonds as they severally become due and payable; and

(c) create reserves for the principal and interest of all the bonds and for the meeting of contingencies in the operation and maintenance of the works or project as the department determines;

(5) make further covenants as to the prices, rates, and charges as the department determines;

(6) create special funds, in addition to those required by this chapter, for money reserved for principal and interest on bonds or for the meeting of contingencies in the operation and maintenance of the works or project and determine the manner in which and the depositary or depositaries in which those funds must be deposited and the manner in which they must be secured. It is lawful for any bank or trust company incorporated under the laws of the state to act as that depositary and to furnish indemnifying bonds or to pledge securities as required by the department;

(7) provide for the replacement of lost, destroyed, or mutilated bonds;

(8) covenant against extending the time for the payment of the principal or interest on any of the bonds, directly or indirectly, by any means or in any manner;

(9) prescribe and covenant as to the events of default and terms and conditions upon which any or all of the bonds become or may be declared due before maturity and as to the terms and conditions upon which the declaration and its consequences may be waived;

(10) covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;

(11) vest in a trustee or trustees the right to enforce any covenant made to secure or to pay the bonds or to foreclose any trust indenture in relation to the bonds, provide for the powers and duties of the trustee or trustees, limit the liabilities of trustees, and provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce the covenant or exercise the right of foreclosure;

(12) make covenants and do any and all acts and things as may be necessary or convenient or desirable in order to secure the bonds or, in the absolute discretion of the department, to make the bonds more marketable, notwithstanding that the covenants, acts, or things may not be enumerated or expressly authorized in this chapter;

(13) do all things in the issuance of the bonds and provide for their security not inconsistent with the constitution of Montana.

History: En. Sec. 8, Ch. 35, Ex. L. 1933; amd. Sec. 3, Ch. 95, L. 1935; re-en. Sec. 349.8, R.C.M. 1935; amd. Sec. 126, Ch. 253, L. 1974; R.C.M. 1947, 89-111(3); amd. Sec. 31, Ch. 298, L. 1983; amd. Sec. 427, Ch. 418, L. 1995.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.
County water and sewer districts, Title 7, ch. 13, parts 22 and 23.
Municipal sewage and water systems, Title 7, ch. 13, part 43.
Water supply and regulation, Title 7, ch. 13, part 44.
Fund structure, 17-2-102.

85-1-308. Provisions for conveyance in trust or mortgage. In the discretion of the department, any trust indenture executed by it as security for a series of bonds may contain provisions for conveying in trust or mortgaging the works, the project, or any part of the works or project, including all water rights that are a part of the works or project, constructed with the proceeds of the bonds or with the proceeds as supplemented by the proceeds of a grant to aid in financing the construction from the United States or any instrumentality or agency of the United States. The trust indenture may be in a form and with rights, remedies, and provisions as is customary in trust indentures, deeds of trust, and mortgages securing bonds or debentures of corporations. Any purchaser at any sale of any works or project pursuant to a judgment or decree in an action to foreclose a trust indenture conveying in trust or mortgaging any works or project shall obtain title to the works or project free from any trust or other obligation of the department, the state of Montana, or the public as to its operation, maintenance, use, or disposition except the obligation to use all water impounded in the works or project for sale, rental, distribution, or other beneficial use.

History: En. Sec. 4, Ch. 95, L. 1935; re-en. Sec. 349.9, R.C.M. 1935; R.C.M. 1947, 89-112; amd. Sec. 428, Ch. 418, L. 1995.

Cross-References

Federal assistance management, Title 17, ch. 3, part 1.
Mortgages, Title 71, ch. 1.
Proceedings in foreclosure suits, 71-1-222.

85-1-309. Actions by trustee and bondholders. (1) Any holder of any bonds issued under 85-1-301 or 85-1-303 or any of the coupons attached to the bonds and the trustee, if any, except to the extent the rights may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may:

(a) either at law or in equity, by suit, action, mandamus, or other proceeding, including proceedings for the appointment of a receiver, protect and enforce any and all rights granted under this chapter or under the resolution or trust indenture; and

(b) enforce and compel performance of all duties required by this chapter or by the resolution or trust indenture to be performed by the department.

(2) While any bonds issued by the department remain outstanding, the powers, duties, or existence of the department or any official or agency of the state may not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of the bonds.

History: **En. Sec. 15, Ch. 35, Ex. L. 1933; re-en. Sec. 349.16, R.C.M. 1935; amd. Sec. 133, Ch. 253, L. 1974; R.C.M. 1947, 89-119; amd. Sec. 429, Ch. 418, L. 1995.**

Cross-References

Official bonds — conditions, form, and signatures, 2-9-504.
Receivers, Title 27, ch. 20.
Mandamus, Title 27, ch. 26.

85-1-310. Refunding revenue bonds. The department may issue refunding revenue bonds under the provisions of Title 7, chapter 7, part 46. For this purpose, in Title 7, chapter 7, part 46, references to "governing body" mean the "department" and references to "municipality" mean the "department".

History: **En Sec. 11, Ch. 212, L. 1979; amd. Sec. 430, Ch. 418, L. 1995.**

Cross-References

Refunding bonds, Title 17, ch. 5, part 3.

85-1-311 through 85-1-319 reserved.

85-1-320. Montana water development state special revenue account. (1) (a) There is a Montana water development state special revenue fund as provided for in 17-2-102 to the credit of the department of natural resources and conservation.

(b) The fund retains its own interest.

(c) The account is composed of revenue gifted to the state or transferred to the account by the legislature and interest generated by the account.

(2) Ninety percent of the earnings from the investment must be distributed to the water storage state special revenue account established in 85-1-631.

(3) Ten percent of the earnings from the investment must be distributed to the natural resources projects state special revenue account established in 15-38-302 to be used for water storage pilot projects and dam inspections required under 85-15-213.

History: **En. Sec. 15, Ch. 775, L. 2025.**

Compiler's Comments

Effective Date: Section 46, Ch. 775, L. 2025, provided: "[This act] is effective on passage and approval." Approved June 19, 2025.

85-1-321. Funds in general. The department shall create a fund to be known as the "administration fund" and shall also create three separate funds in respect of the bonds of each series, one fund to be known as the "construction fund, series....", another fund to be known as the "water fund, series....", and another fund to be known as the "debt service fund, series....", each fund to be identified by the same series letter or letters as the bonds of the series. The money in each fund must be deposited in a depository or depositories and secured in the manner determined by the department. It is lawful for any bank or trust company incorporated under the laws of this state to act as the depository and to furnish indemnifying bonds or to pledge securities as may be required by the department. A separate account must be kept in each construction fund and in each water fund for each project. All expenditures not properly chargeable to the construction fund account or to the water fund account of any one project must be charged by the department in proportions as it shall determine to the construction fund accounts or to the water fund accounts, as the case may be, of the projects in respect of which the expenditures were incurred.

History: **En. Sec. 9, Ch. 35, Ex. L. 1933; re-en. Sec. 349.10, R.C.M. 1935; amd. Sec. 127, Ch. 253, L. 1974; R.C.M. 1947, 89-113; amd. Sec. 32, Ch. 298, L. 1983; amd. Sec. 431, Ch. 418, L. 1995.**

Cross-References

Treasury funds and accounts, Title 17, ch. 2.
Banks and trust companies, Title 32, ch. 1.

85-1-322. Construction capital projects funds. The proceeds of the bonds of each series issued under 85-1-301 and 85-1-303 shall be placed to the credit of the appropriate construction capital projects fund, which fund shall at all times be kept segregated and set apart from all other funds. There shall also be credited to the appropriate construction capital projects fund all accrued interest upon the bonds and the interest received upon the deposits of moneys in the fund and moneys received by way of grant from the United States or from any other source for the construction of the works. The moneys in each construction capital projects fund shall be paid out or disbursed in such manner as may be determined by the department, subject to this chapter, to pay the cost of the works. Any surplus which may remain in any construction capital projects fund after providing for the payment of the cost of the works shall be added to and become a part of the appropriate debt service fund hereinafter provided for.

History: En. Sec. 10, Ch. 35, Ex. L. 1933; re-en. Sec. 349.11, R.C.M. 1935; amd. Sec. 128, Ch. 253, L. 1974; R.C.M. 1947, 89-114; amd. Sec. 33, Ch. 298, L. 1983.

Cross-References

Fund structure, 17-2-102.
Federal assistance management, Title 17, ch. 3, part 1.
Bond issues, Title 17, ch. 5.

85-1-323. Debt service funds. (1) The department shall provide, in the proceedings authorizing the issuance of each series of bonds or in the trust indenture securing the bonds, for the paying into the appropriate debt service fund at stated intervals all money then remaining in the water fund after paying all costs of operation, maintenance, and repairs of the works. All money in each debt service fund must be pledged for the payment of and used only for the purpose of paying:

(a) the interest upon the bonds as interest is due;
(b) the necessary fiscal agency charges for paying bonds and interest;
(c) the principal of the bonds as due; and
(d) any premiums upon bonds retired by call or purchase as provided in this chapter.

(2) (a) Prior to the issuance of the bonds of each series:

(i) the department may provide by resolution or by trust indenture for using the debt service fund or any part of the fund in the purchase of any of the outstanding bonds payable from the fund at the market price of the bonds but not exceeding the price, if any, at which the bonds, at the next interest date, are payable or redeemable;

(ii) all bonds redeemed or purchased must be canceled, and bonds may not be issued in place of the canceled bonds.

(b) The money in each debt service fund, less the reserve that may be provided for in the resolution authorizing the bonds or in the trust indenture for the payment of interest and principal, if not used within a reasonable time for the purchase of bonds for cancellation as provided in this section, must be applied to the redemption of bonds then subject to redemption at the redemption price then applicable.

History: En. Sec. 12, Ch. 35, Ex. L. 1933; re-en. Sec. 349.13, R.C.M. 1935; R.C.M. 1947, 89-116; amd. Sec. 34, Ch. 298, L. 1983; amd. Sec. 432, Ch. 418, L. 1995.

Cross-References

Fund structure, 17-2-102.
Refunding bonds, Title 17, ch. 5, part 3.

85-1-324 through 85-1-330 reserved.

85-1-331. Acceptance and use of appropriations and contributions. The department may receive and accept appropriations and contributions from any source of either money or property or other things of value to be held, used, and applied for the purposes in this chapter.

History: En. Sec. 16, Ch. 35, Ex. L. 1933; re-en. Sec. 349.17, R.C.M. 1935; amd. Sec. 79, Ch. 147, L. 1963; amd. Sec. 134, Ch. 253, L. 1974; R.C.M. 1947, 89-120(2).

Cross-References

Authorization for governmental and public entities to take property by gift or devise, 7-8-103.
Who may make gift or devise to governmental entities, 7-8-104.
Federal revenue and endowments, Title 17, ch. 3.

85-1-332. Disposition of money collected. (1) For the purpose of carrying out the provisions of this chapter and other water resource authority, powers, and duties that are conferred upon the department by law, the following money must be deposited in the water storage state special revenue account created by 85-1-631:

(a) all gifts, donations, bequests, and devises made to the state for purposes of this chapter and proceeds of the sale of the gifts, donations, bequests, and devises; and the proceeds of the sale or redemption of and the interest earned by the securities purchased or acquired with money received under this subsection;

(b) all reimbursements for money advanced for the payment of the assessments upon state, school-granted, and other public lands for the improvement of the lands as provided by law;

(c) all reimbursements for money advanced for the investigation and survey of reclamation, electrification, and rehabilitation systems or projects proposed to be financed in whole or in part by the reclamation of lands and diking, drainage, and diking and drainage dams for conservation of water to be used in reclamation of land or stock reservoirs or for the construction, maintenance, and operation of plants or projects for the manufacture or distribution of electric current;

(d) all reimbursements for costs of surveys and investigations for money advanced to counties, cities, or towns or their proportion of the cost of the surveys and investigations or from any other sources;

(e) except as otherwise provided by law, all income or profit and revenue of the works and all money received from the sale or disposal of water, use of water, water storage, or other service and from the operation, lease, sale, or other disposition of the works, property, and facilities acquired under this chapter; and

(f) except as otherwise provided by law, all sums received by the department for the use of electricity in excess of the maintenance and operation of the electrification system or project.

(2) All sums of money donated or contributed by the federal government or any department or agency of the federal government must be deposited in a federal special revenue account.

History: En. Sec. 1, Ch. 169, L. 1935; re-en. Sec. 349.63, R.C.M. 1935; amd. Sec. 241, Ch. 147, L. 1963; amd. Sec. 153, Ch. 253, L. 1974; amd. Sec. 3, Ch. 460, L. 1977; R.C.M. 1947, 89-401; amd. Sec. 46, Ch. 505, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 9, Ch. 512, L. 1985; amd. Sec. 7, Ch. 144, L. 1999.

Cross-References

Fund structure, 17-2-102.
Retention of agency money, 17-2-202.
Federal revenue and endowments, Title 17, ch. 3.
Deposit of interest and income money by State Board of Land Commissioners, 20-9-342.
Drainage districts — bonds and revenue, Title 85, ch. 8, part 5.
Conservancy districts — disposition and investment of sale proceeds, 85-9-629.

85-1-333. Repealed. Sec. 52, Ch. 505, L. 1981.
History: En. Sec. 2, Ch. 169, L. 1935; re-en. Sec. 349.64, R.C.M. 1935; amd. Sec. 80, Ch. 147, L. 1963; amd. Sec. 154, Ch. 253, L. 1974; R.C.M. 1947, 89-402(part).

85-1-334. Repealed. Sec. 52, Ch. 505, L. 1981.
History: En. Sec. 1, Ch. 148, L. 1951; amd. Sec. 78, Ch. 147, L. 1963; amd. Sec. 130, Ch. 253, L. 1974; R.C.M. 1947, 89-116.1.

Part 4
Special Projects
(Repealed)

85-1-401. Repealed. Sec. 1, Ch. 61, L. 1991.
History: En. Sec. 1, Ch. 534, L. 1979.

85-1-402. Repealed. Sec. 1, Ch. 61, L. 1991.
History: En. Sec. 2, Ch. 534, L. 1979.

85-1-403. Repealed. Sec. 1, Ch. 61, L. 1991.
History: En. Sec. 3, Ch. 534, L. 1979.

85-1-404. Repealed. Sec. 1, Ch. 61, L. 1991.
History: En. Sec. 4, Ch. 534, L. 1979.

85-1-405. Repealed. Sec. 1, Ch. 61, L. 1991.
History: En. Sec. 5, Ch. 534, L. 1979.

85-1-406. Repealed. Sec. 1, Ch. 61, L. 1991.
History: En. Sec. 6, Ch. 534, L. 1979.

85-1-407. Repealed. Sec. 1, Ch. 61, L. 1991.
History: En. Sec. 7, Ch. 534, L. 1979; amd. Sec. 57, Ch. 112, L. 1991.

85-1-408. Repealed. Sec. 1, Ch. 61, L. 1991.
History: En. Sec. 8, Ch. 534, L. 1979.

85-1-409. Repealed. Sec. 1, Ch. 61, L. 1991.
History: En. Sec. 9, Ch. 534, L. 1979.

Part 5
Power Generation at Projects

Part Cross-References

Hydroelectric resources, Title 77, ch. 4, part 2.

85-1-501. Survey of power generation capacity. The department shall study the economic and environmental feasibility of constructing and operating a small-scale hydroelectric power generating facility on each of the water projects under its control and shall periodically update those studies as the cost of the electrical energy increases. In determining whether small-scale hydroelectric generation may be economically feasible on a particular project, the department shall consider:

(1) the estimated cost of construction of a facility;

(2) the estimated cost of maintaining, repairing, and operating the facility;

(3) the estimated cost of tying into an existing power distribution channel;

(4) the ability of public utilities or rural electric cooperatives to lease and operate such a facility;

(5) the debt burden to be serviced;

(6) the revenue expected to be derived;

(7) the likelihood of a reasonable rate of return on the investment; and

(8) the potential impacts on water supply and streamflows.

History: En. Sec. 1, Ch. 503, L. 1981; amd. Sec. 1, Ch. 275, L. 2011; amd. Sec. 114, Ch. 261, L. 2021; amd. Sec. 11, Ch. 460, L. 2025; amd. Sec. 12, Ch. 625, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 11, Ch. 460, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 12, Ch. 625, L. 2025. Amendment effective May 13, 2025. The amendment by Ch. 460 rendered the amendment by Ch. 625 void.

85-1-502. Notice of availability of lease sites. (1) If after completion of the feasibility study of a particular project the department determines that hydroelectric power generation at the project would be feasible and in the best interest of the people of the state of Montana, it shall publish notice and make the site available for lease for the purpose of small-scale hydroelectric power generation, pursuant to 85-1-502 through 85-1-508, unless that action would result in the forfeiture of any necessary federal license, permit, or exemption, in which case the department may proceed under 85-1-509.

(2) In issuing a notice of availability of a site for lease under this section, the department shall include in the notice any reasonable conditions it may find necessary in order to protect the interests of the state.

History: En. Sec. 2, Ch. 503, L. 1981; amd. Sec. 1, Ch. 96, L. 1983; amd. Sec. 433, Ch. 418, L. 1995.

Cross-References

Printing and legal notices, Title 18, ch. 7.

85-1-503. Receipt of applications. (1) Applications for lease may be submitted by any person qualified to do business in Montana.

(2) The department shall consider only applications received within 180 days after the final publication of the notice.

(3) Applications must include a statement of the capability of the applicant to achieve the annual production output estimated by the department, the estimated time to make the project operational, the bid amount of the royalty, and any other information that the department requests.

History: En. Sec. 3, Ch. 503, L. 1981; amd. Sec. 1, Ch. 293, L. 1985; amd. Sec. 434, Ch. 418, L. 1995.

85-1-504. Determinations by department. (1) Within a reasonable time following the conclusion of the lease application period, the department shall hold a hearing to examine all applications that have been received for the lease of the project.

(2) Within 180 days following the conclusion of the lease application period, the department shall reject any or all applications or shall award a lease to the party whose offer, considered in its totality, is the most advantageous to the state.

(3) The decision must include a determination that the potential developer will provide an adequate royalty payment, is capable of carrying out the proposed development, can provide efficient and reliable service, and intends in good faith without unnecessary delay to proceed with the development.

(4) If all lease applications are rejected, the department may negotiate with all applicants on an equal basis in an effort to arrive at an acceptable application.

History: **En. Sec. 4, Ch. 503, L. 1981; amd. Sec. 435, Ch. 418, L. 1995.**

85-1-505. Lease conditions. (1) The lessee shall pay a royalty to the state as required in the lease.

(2) The department may authorize provisions in the lease that offer economic incentives for rapid development of the project or impose economic penalties for delays in development, which may include cancellation of the lease.

History: **En. Sec. 5, Ch. 503, L. 1981; amd. Sec. 436, Ch. 418, L. 1995.**

85-1-506. Compliance with federal law. The department may hold a license, permit, or exemption under federal law on a project.

History: **En. Sec. 6, Ch. 503, L. 1981; amd. Sec. 2, Ch. 293, L. 1985.**

85-1-507. Duration of lease. The term of the lease may not exceed the term of the license, permit, or exemption held by the department under 85-1-506 and may in no event exceed 55 years.

History: **En. Sec. 7, Ch. 503, L. 1981.**

85-1-508. Duties of the department. The department has primary responsibility for supervision of any lease.

History: **En. Sec. 8, Ch. 503, L. 1981; amd. Sec. 437, Ch. 418, L. 1995.**

85-1-509. Power generation by department authorized. (1) If lease applications are not received under 85-1-503 or if the department rejects all lease applications under 85-1-504, the department may proceed to obtain any necessary license, permit, or exemption under federal law and commence construction and operation of a small-scale hydroelectric generation facility pursuant to the provisions of this chapter. Construction may not commence until the department has clear and convincing evidence that construction is economically feasible and is the most practical means by which the facility could be developed.

(2) Financing of construction and operation of the facility must be accomplished in a manner determined by the department to be most feasible.

History: **En. Sec. 9, Ch. 503, L. 1981; amd. Sec. 438, Ch. 418, L. 1995; amd. Sec. 1, Ch. 209, L. 1999.**

Cross-References

Rural cooperative utilities, Title 35, ch. 18.
Public Utilities and Carriers, Title 69.

85-1-510. Sale of power and allocation of revenue. (1) If the operator of a small-scale hydroelectric generation facility under this chapter and a public utility or an electric cooperative are unable to mutually agree to a contract for the sale of electricity or a price for the electricity purchased by the utility or electric cooperative, the public service commission shall require the utility or electric cooperative to purchase the power under rates and terms established as provided in 85-1-511 through 85-1-513.

(2) The revenue derived from hydroelectric power generation under this part must be deposited in the state water project hydroelectric power generation special revenue account created under 85-1-220. The funds in the account must be used to repair and rehabilitate state-owned water projects and works and to pay the cost of financing those activities.

History: **En. Sec. 10, Ch. 503, L. 1981; amd. Sec. 3, Ch. 370, L. 1991.**

Cross-References

Rural cooperative utilities, Title 35, ch. 18.
Public Utilities and Carriers, Title 69.

85-1-511. Determination by the public service commission. A determination of the rates and terms under which the power must be purchased shall be made by the public service commission upon petition of the facility operator or a public utility or electric cooperative or during a rate proceeding involving the review of rates paid for electricity purchased from the facility. The commission shall render a decision within 120 days from receipt of the petition or before the completion of the rate review proceeding. The rate and terms of the determination must be according to the standards specified in 85-1-512.

History: En. Sec. 11, Ch. 503, L. 1981.

Cross-References

Public Service Commission, Title 69, ch. 1, part 1.

85-1-512. Standards for the determination. (1) The standards for the determination provided for in 85-1-511 by the public service commission shall include the following:

(a) Long-term contracts for the purchase of electricity by the utility or electric cooperative from a small-scale hydroelectric facility under this chapter shall be encouraged in order to enhance the economic feasibility of such facilities.

(b) The rates paid by a utility or electric cooperative to a small-scale hydroelectric facility may not exceed, over the term of the purchase contract, the incremental cost to the utility or electric cooperative of the electricity that, but for the purchase from the small-scale hydroelectric facility, the utility or electric cooperative would generate or purchase from another source.

(c) The rates to be paid by a utility or an electric cooperative for power purchased from a small-scale hydroelectric facility shall be established with consideration of the availability and reliability of the power produced.

(2) The commission may set these rates by use of any of the following methods:

(a) the levelized avoided cost over the term of the contract;

(b) the cost of production for the small-scale hydroelectric facility plus a just and reasonable return; or

(c) any other method that will promote the development of small-scale hydroelectric facilities.

History: En. Sec. 12, Ch. 503, L. 1981.

Cross-References

Public Service Commission, Title 69, ch. 1, part 1.

85-1-513. Purchase of power by electric cooperative not agreeing to be bound by public service commission determination. If any electric cooperative wishing to purchase power from a small-scale hydroelectric facility under this chapter refuses to submit to the ratemaking authority of the public service commission established in 85-1-511, then the rate for such cooperative may be determined by the federal energy regulatory commission upon proper petition. The facility shall sell power in accordance with such determination, so long as the rates and terms so established will allow the facility a reasonable return.

History: En. Sec. 13, Ch. 503, L. 1981.

Cross-References

Rural cooperative utilities, Title 35, ch. 18.

85-1-514. Power generation negotiation process. (1) A person with federal authorization or, if authorization is not required, a person planning to construct a small-scale hydroelectric generation facility at a state-owned project shall submit an application to the department for hydroelectric development at the state-owned project site.

(2) Upon receipt of a written application under subsection (1), the department shall make an investigation and prepare a report on the value of the power site, the plans of development submitted by the applicant, and any other matters relating to the proposed development that the department considers necessary for the proper development of hydroelectric generation at the state-owned project.

(3) Upon completion of the report, the department may negotiate with the applicant for the acquisition of the necessary interest in the state-owned project to effectively allow the applicant to operate a hydroelectric facility. The terms, conditions, and compensation agreed to must include but not be limited to the full market value of the interest disposed of by the department. Full market value must be determined by the department in the report completed under subsection (2).

(4) An applicant under subsection (1) shall pay to the department all costs incurred by the department in carrying out its duties under this section. The department and the applicant shall contract for the provision of services and payment of fees required by this section prior to accepting an application under subsection (2).

(5) Nothing in this section requires the department to construct, rehabilitate, reconstruct, operate, or otherwise maintain the state-owned project to accommodate the hydroelectric facility except as negotiated under subsection (3).

History: **En. Sec. 3, Ch. 293, L. 1985; amd. Sec. 439, Ch. 418, L. 1995.**

Cross-References

Disposal of property by Department, 85-1-210.

Part 6
Renewable Resource Grant and Loan Program

Part Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

Protection and improvement of environment — remedies to prevent unreasonable depletion, Art. IX, sec. 1, Mont. Const.

Coal severance tax trust fund, Art. IX, sec. 5, Mont. Const.

Fund structure, 17-2-102.

Bond issues, Title 17, ch. 5.

85-1-601. Purpose and policies. (1) The legislature finds and declares that in order that the people of Montana may enjoy the benefits of the state's water and other renewable resources, the state shall establish this long-term renewable resource grant and loan program providing financial and administrative assistance to private for-profit, private, nonprofit, local government, state government, and tribal government entities for renewable resource grant and loan projects.

(2) The purpose of the renewable resource grant and loan program is to further the state's policies, set forth in 85-1-101, regarding the conservation, development, and beneficial use of water resources and to invest in renewable natural resource projects that will preserve for the citizens of Montana the economic and other benefits of the state's natural heritage.

(3) The legislature recognizes the value of Montana's renewable resources; therefore, it is appropriate that a portion of the taxes and other revenue from nonrenewable resources be invested in the replacement of nonrenewable resources with the development of renewable resource projects that will continue to provide tax and other revenue and will preserve for the citizens the economic and other benefits of the state's natural heritage.

(4) The conservation, development, management, and preservation of water and other renewable resources are high priorities because a large portion of Montana's present and future economy is based either directly or indirectly on the wise use of these resources.

(5) Developments supported by this part may not significantly diminish the quality of existing public resources, such as land, air, fish, wildlife, and recreation opportunities.

(6) This renewable resource grant and loan program supports, in part, the implementation and development of the comprehensive, coordinated, multiple-use water resources plan known as the "state water plan". In making funding recommendations for grants and loans, the department shall give preference to projects that will implement state water plan priorities if, in all other respects, the proposed projects are equal in public benefit and technical feasibility.

(7) Source watersheds are an integral component of Montana's water resources. Source watersheds that provide the majority of the state's drinking and irrigated agricultural water are particularly important to maintaining the reliability, quantity, timing, and quality of Montana's environmental, drinking, and agricultural water supply. Because source watersheds have a critical role in enhancing water supply reliability, the maintenance and repair of source watersheds are eligible for the renewable resource grant and loan program.

(8) Soil and range health play a vital role in protecting and sustaining Montana's renewable natural resources by retaining water, soil, and nutrients in place on the landscape. Enhancing soil and range health will provide long-term benefits to Montana's water and other renewable resources and to the users, wildlife, and economies they support.

History: **En. Sec. 1, Ch. 505, L. 1981; amd. Sec. 9, Ch. 478, L. 1993; amd. Sec. 2, Ch. 436, L. 1997; amd. Sec. 1, Ch. 341, L. 2017.**

Cross-References

Protection and improvement of environment — remedies to prevent unreasonable depletion, Art. IX, sec. 1, Mont. Const.

85-1-602. Objectives. (1) The department shall administer a renewable resource grant and loan program to enhance Montana's renewable resources through projects that measurably conserve, develop, manage, or preserve resources. Either grants or loans may be provided to fund the following:

(a) feasibility, design, research, and resource assessment studies;

(b) preparation of construction, rehabilitation, or production plans; and

(c) construction, rehabilitation, production, education, or other implementation efforts.

(2) Projects that may enhance renewable resources in Montana include but are not limited to:

(a) development of natural resource-based recreation;

(b) development of natural, offstream, and tributary storage;

(c) improvement of water use efficiency, including development of new, efficient water systems, rehabilitation of older, less efficient water systems, and acquisition and installation of measuring devices required under 85-2-113; monitoring; and development of state, tribal, and federal water projects;

(d) water-related projects that improve water quality, including livestock containment facility projects, soil and range health projects, and the maintenance and repair of source watersheds;

(e) water-related projects that improve water quantity, including streamflows and water storage in existing natural systems, such as riparian areas, flood plains, and wetlands;

(f) advancement of farming practices that reduce agricultural chemical use; and

(g) projects that facilitate the use of alternative renewable energy sources, as defined in 15-6-225.

(3) The renewable resource grant and loan program is the key implementation portion of the state water plan and must be administered to encourage grant and loan applications for projects designed to accomplish the objectives of the plan.

(4) A grant or loan may not be awarded to a project that affects source watersheds or soil and range health if the project would reduce, restrict, or prohibit any lawful access to the property that existed prior to the project's implementation. This subsection does not apply to access that is temporarily created, granted, or reduced due to project operations.

History: En. Sec. 2, Ch. 505, L. 1981; amd. Sec. 1, Ch. 116, L. 1989; amd. Sec. 4, Ch. 543, L. 1991; amd. Sec. 10, Ch. 478, L. 1993; amd. Sec. 3, Ch. 436, L. 1997; amd. Sec. 1, Ch. 169, L. 2001; amd. Sec. 1, Ch. 117, L. 2005; amd. Sec. 2, Ch. 341, L. 2017.

Cross-References

State water plan, 85-1-203.

85-1-603. Renewable resource loan debt service fund created — coal severance tax allocated — renewable resource loan loss reserve fund created. (1) (a) There is created a renewable resource loan debt service fund within the debt service fund type established in 17-2-102.

(b) The state pledges and allocates and directs to be credited to the renewable resource loan debt service fund, as received:

(i) 0.95% of all money from time to time received from the coal severance tax collected under Title 15, chapter 35;

(ii) any principal and accrued interest under 85-1-613(5)(a) received in repayment of a loan made from the proceeds of bonds issued under 85-1-617;

(iii) all interest income earned on proceeds of renewable resource grant and loan program bonds;

(iv) revenue or money otherwise required to be paid into the natural resources projects state special revenue account pursuant to 15-38-302, as determined by the board of examiners in connection with the issuance of bonds pursuant to 85-1-617; and

(v) money received from the renewable resource loan loss reserve fund as the result of a loan loss.

(2) (a) There is a renewable resource loan loss reserve fund within the debt service fund type established in 17-2-102.

(b) The state pledges and allocates and directs to be credited to the renewable resource loan loss reserve fund all accrued interest under 85-1-613(5)(b) received in repayment of a loan made from the proceeds of bonds issued under 85-1-617.

(c) If the department determines that a loan loss has occurred on a loan made pursuant to this part, funds from the renewable resource loan loss reserve fund must be transferred to the renewable resource loan debt service fund in an amount equal to the amount that would otherwise be available for debt service under subsection (1)(b) as a result of the loan loss.

History: En. Sec. 4, Ch. 505, L. 1981; amd. Sec. 35, Ch. 298, L. 1983; amd. Sec. 1, Ch. 6, Sp. L. March 1986; amd. Sec. 2, Ch. 2, L. 1987; amd. Sec. 2, Ch. 491, L. 1989; amd. Sec. 11, Ch. 478, L. 1993; amd. Sec. 6, Ch. 442, L. 1995; amd. Sec. 1, Ch. 332, L. 1997; amd. Sec. 15, Ch. 432, L. 2007.

Cross-References

State water plan, 85-1-203.

85-1-604. Repealed. Sec. 30, Ch. 432, L. 2007.

History: En. Sec. 5, Ch. 505, L. 1981; amd. Sec. 2, Ch. 149, L. 1983; amd. Sec. 36, Ch. 298, L. 1983; amd. Sec. 10, Ch. 512, L. 1985; amd. Sec. 2, Ch. 6, Sp. L. March 1986; amd. Sec. 2, Ch. 116, L. 1989; amd. Sec. 3, Ch. 491, L. 1989; amd. Sec. 5, Ch. 543, L. 1991; amd. Sec. 9, Ch. 659, L. 1991; amd. Sec. 12, Ch. 478, L. 1993; amd. Sec. 3, Ch. 577, L. 1995; amd. Sec. 297, Ch. 42, L. 1997; amd. Sec. 5, Ch. 444, L. 1997; amd. Sec. 8, Ch. 144, L. 1999; amd. Sec. 7, Ch. 307, L. 2005.

85-1-605. Grants, loans, and bonds for state, local, or tribal government assistance. (1) The department may recommend to the legislature that grants and loans be made from revenue deposited in the natural resources projects state special revenue account established in 15-38-302, that loans be made from renewable resource bond proceeds deposited in the renewable resource loan proceeds account established in 85-1-617(5), and that coal severance tax bonds be authorized pursuant to Title 17, chapter 5, part 7, to provide financial assistance to a department, agency, board, commission, or other division of state government, to a city, county, or other political subdivision or local government body of the state, including an authority as defined in 75-6-304, or to a tribal government. The legislature may approve by appropriation or other appropriate means those grants and loans that it finds consistent with the policies and purposes of the program.

(2) In addition to legislative approval pursuant to subsection (1), the department may request that the board of examiners issue renewable resource bonds of the state so the department may make loans for projects from renewable resource bond proceeds deposited in the renewable resource loan proceeds account established in 85-1-617(5) to a department, agency, board, commission, or other division of state government, to a municipality, county, or other political subdivision or local government body of the state, including an authority as defined in 75-6-304, an irrigation district, a water and sewer district, or other special districts, or to a tribal government.

(3) Nothing in this part creates or expands the state's or a local government's authority to incur debt, and the legislature may authorize and the department may make loans only to state and local government entities otherwise structured to incur debt.

(4) Loans may not be authorized except to a state, local, or tribal government entity that agrees to secure the authorized loan with its bond.

(5) In addition to implementing those projects approved by the legislature or requested by the department pursuant to subsection (2), the department may request up to 10% of the grant funds available and up to $10 million for loans from the natural resources projects state special revenue account established in 15-38-302 and the renewable resource loan proceeds account in any biennium to be used for emergencies. These emergency grant projects or loan projects, or both, may not be made because of the gross negligence of the state, local, or tribal government applicant, must be approved by the department, and must be defined as those projects otherwise eligible for either grant funding or loan funding or both that, if delayed, will cause substantial damages or legal liability to the project sponsor. In allocating the funds, the department shall inform the legislative fiscal analyst. The department shall provide a copy of the information to the legislature in accordance with 5-11-210.

(6) The grants and loans provided for by this section may be made for projects that enhance renewable resources in the state through conservation, development, management, or preservation, for assessing feasibility or planning, for implementing renewable resource

projects, and for similar purposes approved by the legislature or requested by the department pursuant to subsection (2).

(7) Grant and loan agreements with tribal governments in Montana entered into under this part must contain, in addition to other appropriate terms and conditions, the following conditions:

(a) a requirement that in the event a dispute or claim arises under the agreement, state law will govern as to the interpretation and performance of the agreement and that any judicial proceeding concerning the terms of the agreement will be brought in the district court of the first judicial district of the state of Montana;

(b) an express waiver of the tribal government's immunity from suit on any issue specifically arising from the transaction of a loan or grant; and

(c) an express waiver of any right to exhaust tribal remedies signed by the tribal government.

History: En. Sec. 6, Ch. 505, L. 1981; amd. Sec. 3, Ch. 149, L. 1983; amd. Sec. 37, Ch. 298, L. 1983; amd. Sec. 11, Ch. 512, L. 1985; amd. Sec. 13, Ch. 478, L. 1993; amd. Sec. 1, Ch. 50, L. 1997; amd. Sec. 4, Ch. 436, L. 1997; amd. Sec. 24, Ch. 498, L. 1999; amd. Sec. 16, Ch. 432, L. 2007; amd. Sec. 19, Ch. 120, L. 2013; amd. Sec. 115, Ch. 261, L. 2021; amd. Sec. 1, Ch. 541, L. 2023.

Cross-References

Legislative Finance Committee, Title 5, ch. 12, part 2.

85-1-606. Grants and loans to private persons. (1) To encourage the construction and development of water-related projects, the department may make grants and loans to private persons from funds appropriated from the natural resources projects state special revenue account established in 15-38-302 and may make loans to private persons from the renewable resource loan proceeds account.

(2) The department shall publicize the statutes and rules governing grants and loans to private persons for water-related projects, set and publicize application deadlines, and accept applications for grants and loans.

(3) The department shall review, evaluate, and select the water-related projects for which grants or loans may be awarded.

History: En. Sec. 7, Ch. 505, L. 1981; amd. Sec. 38, Ch. 298, L. 1983; amd. Sec. 14, Ch. 478, L. 1993; amd. Sec. 17, Ch. 432, L. 2007.

85-1-607. Repealed. Sec. 35, Ch. 478, L. 1993.

History: En. Sec. 8, Ch. 505, L. 1981.

85-1-608. Applications for grants and loans to private persons. (1) A private person may apply for a grant or loan to finance a water-related project to be constructed, developed, and operated in Montana.

(2) An application for a loan or grant must be in the form prescribed by rule and contain or be accompanied by any information necessary to adequately describe the proposed project and necessary for evaluation of the proposed project under the criteria set out in 85-1-609 and 85-1-610.

History: En. Sec. 9, Ch. 505, L. 1981; amd. Sec. 15, Ch. 478, L. 1993.

85-1-609. Eligibility for a loan or grant to a private person. The department may not award a grant or loan to a private person unless the department finds, based on the application and the department's investigation and evaluation of the proposal, that:

(1) the proposed water-related project:

(a) will promote, enhance, or advance the purpose, policies, and objectives of the renewable resource grant and loan program;

(b) will be constructed, developed, and operated within the state of Montana;

(c) will be economically feasible. (A project is economically feasible if the project benefits exceed the project costs. The department shall consider only quantifiable benefits and costs in calculating economic feasibility.)

(d) will be an efficient use of natural resources, including water, energy, land, and air. (An efficient use is one that minimizes waste.)

(e) will provide multipurpose facilities to the extent practicable;

(f) will comply with statutory and regulatory standards protecting the quality of resources such as air, water, land, fish, wildlife, and recreational opportunities;

(g) will provide associated public benefits in addition to any private benefits the project may provide; and

(h) is needed to accomplish the purpose for which the project is proposed;

(2) the applicant has adequate financial resources to construct, operate, and maintain the project. The department shall consider financial resources from any source for which the applicant has qualified, including a renewable resource grant or loan.

(3) the applicant holds or can acquire all necessary lands, other than public lands, and interests in the lands and water rights necessary for the construction, operation, and maintenance of the proposed project;

(4) if the application is for a loan, the applicant is creditworthy and able and willing to enter into a contract with the department for loan repayment and construction or development of the proposed project; and

(5) if the application is for a grant, the applicant is able and willing to enter into a contract with the department for construction or development of the proposed project.

History: **En. Sec. 10, Ch. 505, L. 1981; amd. Sec. 16, Ch. 478, L. 1993.**

Cross-References

State water plan, 85-1-203.

85-1-610. Evaluation of grants and loans to private persons. The department shall consider the following criteria and preferences in evaluating applications and selecting the recipients of grants and loans for water-related projects that are eligible for funding under 85-1-609:

(1) The extent and desirability of the public benefits that will be provided must be considered.

(2) A water-related project that will be used as part of a family farm must be given preference. A family farm is one devoted primarily to agriculture under the ownership and operation of a resident Montana family.

(3) A water-related project that will utilize or develop water reserved under 85-2-316 must be given preference.

(4) The department, to the extent practicable, shall attempt to achieve geographic balance in the promotion of renewable resource grant and loan projects through the awarding of loans and grants to private persons.

(5) The extent to which the project will effectively utilize water resources and promote the conservation and efficient use of the water resource must be evaluated and considered.

(6) Projects that could not be accomplished without the assistance of a loan or grant must be given preference.

(7) The department shall give due consideration to any other factor that, in the department's judgment, is important to the evaluation of the project in light of the purposes, policies, and objectives of the renewable resource grant and loan program.

History: **En. Sec. 11, Ch. 505, L. 1981; amd. Sec. 12, Ch. 512, L. 1985; amd. Sec. 17, Ch. 478, L. 1993.**

Cross-References

State water plan, 85-1-203.

85-1-611. Department to solicit views. The department shall solicit and consider in its evaluation of proposed projects the views of interested and affected departments, boards, agencies, commissions, and other subdivisions of the state, including local political subdivisions, of a tribal government, of the federal government, and of other interested and affected persons.

History: **En. Sec. 12, Ch. 505, L. 1981; amd. Sec. 18, Ch. 478, L. 1993; amd. Sec. 5, Ch. 436, L. 1997.**

85-1-612. Rulemaking authority. The department shall adopt rules:

(1) prescribing a reasonable application fee and the form and content of applications for grants and loans;

(2) governing the application of the criteria for awarding loans and grants to private persons;

(3) providing for the servicing of loans including arrangements for obtaining security interests and the establishment of reasonable fees or charges to be made;

(4) describing the terms and conditions for making grants and loans, the security instruments, and the agreements necessary;

(5) describing the ranking criteria used to evaluate and prioritize grants to governmental entities, which must include a ratio calculated by dividing the amount of the locally provided match, which includes cash or capital improvement funds, by the annual operating budget for the system. Projects with a higher ratio of match may be given priority over other projects with a lower ratio, and consideration must be given to the size and cost of the proposed project, the number of users the project serves, and the ability of the applicant to fund the fund dedicated to capital improvements.

(6) specifying any other procedures necessary to accomplish the objectives of the renewable resource grant and loan program.

History: En. Sec. 13, Ch. 505, L. 1981; amd. Sec. 19, Ch. 478, L. 1993; amd. Sec. 6, Ch. 629, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 629, L. 2025. Amendment effective July 1, 2025.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

85-1-613. Limits on loans. (1) A loan to a private person that is not a water users' association or ditch company organized and incorporated pursuant to Title 35, chapter 14, or Title 85, chapter 6, part 1, for a renewable resource grant and loan program project may not be made from the natural resources projects state special revenue account established in 15-38-302 or the renewable resource loan proceeds account if the loan exceeds the lesser of $400,000 or 80% of the fair market value of the security given for the project. In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors that it considers important.

(2) A loan to a private person that is a water users' association or ditch company organized and incorporated pursuant to Title 35, chapter 14, or Title 85, chapter 6, part 1, may not be made from the natural resources projects state special revenue account established in 15-38-302 or the renewable resource loan proceeds account if the loan would exceed the lesser of $3 million or an amount representing the annual debt service on the loan that would exceed 80% of the annual net revenue of the system that would be pledged for payment of the loan. In determining the amount of annual net revenue that may be pledged for payment of the loan, annual expenses for operation and maintenance must be subtracted from the gross revenue of the system.

(3) A loan to the state, a local government, or a tribal government for a renewable resource grant and loan program project may not be made by the department from the natural resources projects state special revenue account established in 15-38-302 or renewable resource loan proceeds account if the loan exceeds the project sponsor's remaining debt capacity.

(4) The period for repayment of loans may not exceed 30 years.

(5) The interest rate at which loans may be made under this part must be sufficient to:

(a) cover the bond debt service for a loan; and

(b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs.

(6) A loan made under this part may not be used for the cost of operation and maintenance of a project.

History: En. Sec. 14, Ch. 505, L. 1981; amd. Sec. 4, Ch. 149, L. 1983; amd. Sec. 39, Ch. 298, L. 1983; amd. Sec. 4, Ch. 491, L. 1989; amd. Sec. 20, Ch. 478, L. 1993; amd. Sec. 2, Ch. 332, L. 1997; amd. Sec. 6, Ch. 436, L. 1997; amd. Sec. 1, Ch. 418, L. 2005; amd. Sec. 18, Ch. 432, L. 2007; amd. Sec. 268, Ch. 271, L. 2019; amd. Sec. 2, Ch. 541, L. 2023.

Cross-References

Fund structure, 17-2-102.

Renewable resource loan proceeds account, 85-1-617.

85-1-614. Limits on grants from natural resources projects state special revenue account. (1) The maximum grant awarded to a private person may not exceed the lesser of:

(a) 5% of the estimated total funds potentially available in the natural resources projects state special revenue account established in 15-38-302 for public and private grants in the biennium in which the grant will be made; or

(b) 50% of the total project cost.

(2) This part does not limit the amount of grant funds that may be appropriated by the legislature to fund a state or local government project.

History: En. Sec. 15, Ch. 505, L. 1981; amd. Sec. 40, Ch. 298, L. 1983; amd. Sec. 21, Ch. 478, L. 1993; amd. Sec. 19, Ch. 432, L. 2007; amd. Sec. 3, Ch. 341, L. 2017.

85-1-615. Security interests — purchase, operation, and resale of encumbered property. (1) The state has a lien upon a project constructed with money from the natural resources projects state special revenue account established in 15-38-302 or the renewable resource loan proceeds account for the amount of the loan and interest due the state. This lien may attach to any project facilities, equipment, easements, real property, shares of stock in a water users' association, revenue of a water users' association, accounts receivable of a water users' association, water purchase agreements, and property of any kind or nature owned by the debtor, including all water rights. The department shall file with the county clerk and recorder of each county in which a part of the project is located either a financing statement or a real estate mortgage covering the loan, its amount, terms, and a description of the security. The county clerk and recorder shall record and index the lien as other liens are required by law to be recorded and indexed. The lien is valid until paid in full or otherwise discharged. The lien must be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens.

(2) From the funds available under 15-38-301, 85-1-603, or 85-1-617, the state may:

(a) purchase a lien that is prior to the state's lien if:

(i) the director of the department determines that the loan is in default and the prospects for collecting the loan may be materially increased by purchasing the prior lien; and

(ii) the amount to be paid for the prior lien does not exceed the appraised value of the property;

(b) operate property that is subject to the state's lien if the director of the department determines that the loan is in default and that the prospects for collecting the loan may be materially increased by operating the property that is subject to the state's lien; or

(c) purchase a prior lien as provided in subsection (2)(a) and operate property as provided in subsection (2)(b).

(3) Any property acquired under the provisions of this section must be resold as expeditiously as possible to recover funds used under this section and funds loaned to the borrower.

History: **En. Sec. 16, Ch. 505, L. 1981; amd. Sec. 41, Ch. 298, L. 1983; amd. Sec. 5, Ch. 491, L. 1989; amd. Sec. 22, Ch. 478, L. 1993; amd. Sec. 3, Ch. 332, L. 1997; amd. Sec. 76, Ch. 7, L. 2001; amd. Sec. 20, Ch. 432, L. 2007; amd. Sec. 13, Ch. 351, L. 2017.**

Cross-References

Liens, Title 71, ch. 3.

Renewable resource loan proceeds account, 85-1-617.

85-1-616. Administration of loans and grants. The department shall:

(1) administer the loan and grant program established by this part;

(2) service loans made or contract and pay for the servicing of loans, including arrangements for obtaining security interests; and

(3) collect reasonable fees or charges for the servicing of loans, including arrangements for obtaining security interests. The fees and charges must be deposited in the natural resources projects state special revenue account established in 15-38-302.

History: **En. Sec. 17, Ch. 505, L. 1981; amd. Sec. 5, Ch. 149, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 23, Ch. 478, L. 1993; amd. Sec. 21, Ch. 432, L. 2007.**

85-1-617. Issuing renewable resource bonds — renewable resource loan proceeds account. (1) When authorized by the legislature or requested by the department pursuant to 85-1-605(2) and within the limits of the authorization on the request and the further limitations established in this section, the board of examiners may issue and sell renewable resource bonds of the state in the amount and manner it considers necessary and proper to finance the renewable resource grant and loan program. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds issued and interest and redemption premiums payable on the bonds according to their terms.

(2) Each series of renewable resource bonds may be issued by the board of examiners, upon request of the department, at public or private sale, in denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at a rate or rates, maturing at

a rate or rates, maturing at a time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at earlier times and prices and upon notice, with provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of a banking institution or institutions within or outside the state that the board of examiners shall determine subject to the limitations contained in this section and 17-5-731.

(3) In the issuance of each series of renewable resource bonds, the interest rates and the maturities and mandatory redemption provisions contained in the bonds must be established in a manner that the funds then specifically pledged and appropriated by law to the renewable resource loan debt service fund will, in the judgment of the board of examiners, be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. The bonds, notes, and interest coupons appurtenant to the bonds or notes must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all bonds and notes issued and sold.

(5) There is created a renewable resource loan proceeds account within the state special revenue fund established in 17-2-102.

(6) All proceeds of bonds or notes issued under this section, other than refunding bonds, must be deposited in the renewable resource loan proceeds account established in subsection (5), except that any principal and accrued interest received in repayment of a loan made from the proceeds of bonds issued under this section must be deposited in the renewable resource loan debt service fund and the renewable resource loan loss reserve fund pursuant to 85-1-603. All proceeds of refunding bonds must be deposited in the renewable resource loan debt service fund and applied to the payment and redemption of outstanding bonds issued under this section as directed by the board of examiners, whether at maturity or on any earlier date on which they may be prepaid according to their terms.

(7) All actions taken by the board of examiners under this section or 85-1-619 must be authorized by a vote of a majority of the members of the board of examiners.

History: **En. Sec. 18, Ch. 505, L. 1981; amd. Sec. 6, Ch. 149, L. 1983; amd. Secs. 42, 55, Ch. 298, L. 1983; amd. Sec. 13, Ch. 512, L. 1985; amd. Sec. 3, Ch. 6, Sp. L. March 1986; amd. Sec. 6, Ch. 491, L. 1989; amd. Sec. 24, Ch. 478, L. 1993; amd. Sec. 3, Ch. 541, L. 2023.**

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

Bond issues, Title 17, ch. 5.

85-1-618. Restrictions on use of bond proceeds. Renewable resource bond proceeds may be used only for the purpose of making loans as provided in the renewable resource grant and loan program or for purchasing liens and operating property as provided in 85-1-615.

History: **En. Sec. 19, Ch. 505, L. 1981; amd. Sec. 7, Ch. 491, L. 1989; amd. Sec. 25, Ch. 478, L. 1993.**

85-1-619. Debt service fund — pledge and administration of sufficient balance. (1) The legislature may levy, impose, assess, and pledge and appropriate to the renewable resource loan debt service fund any tax, charge, fee, rental, or other income from any designated source. The state reserves the right to modify from time to time the nature and amount of special taxes and other revenue pledged and appropriated to the renewable resource loan debt service fund, provided that the aggregate resources so pledged and appropriated are determined by the legislature to be sufficient for the prompt and full payment of the principal of and interest and redemption premiums when due on all bonds payable from that fund and provided that the pledge of the full faith and credit and taxing powers of the state for the security of all bonds is and remains irrevocable until they are fully paid.

(2) Money in the renewable resource loan debt service fund must be used to pay interest, principal, and redemption premiums when due and payable with respect to renewable resource bonds, and for bonds issued prior to 1985, to accumulate a reserve for the further security of the payments.

(3) After the reserve provided for in subsection (2) for bonds issued prior to 1985 has been accumulated in the renewable resource loan debt service fund, money at any time received in the renewable resource loan debt service fund in excess of that amount must be transferred by the treasurer to the natural resources projects state special revenue account.

History: En. Sec. 20, Ch. 505, L. 1981; amd. Sec. 43, Ch. 298, L. 1983; amd. Sec. 14, Ch. 512, L. 1985; amd. Sec. 26, Ch. 478, L. 1993; amd. Sec. 116, Ch. 2, L. 2009.

85-1-620. Renewable resource refunding bonds. (1) The board of examiners may issue refunding bonds at times and in amounts, if any, as may be necessary to pay principal or interest due that cannot be paid from funds then on hand in the renewable resource loan debt service fund. The board of examiners may also issue refunding bonds to refund outstanding bonds before maturity for the purpose of extending the maturities of the outstanding bonds determined by the board of examiners to be necessary to assure that the funds then pledged to the renewable resource loan debt service fund will be sufficient for payment of principal and interest due in subsequent years. The board of examiners may also issue refunding bonds to refund outstanding bonds before maturity for the purpose of reducing the interest cost or the total amount of principal and interest payable on the outstanding bonds.

(2) Refunding bonds may not be issued and sold more than 3 months before all of the bonds refunded mature or are called for redemption unless the proceeds of the refunded bonds, with any other funds in the renewable resource loan debt service fund that are needed and available for the purpose or securities purchased from proceeds and other funds, are deposited with a suitable banking institution within or outside the state, in escrow, for the retirement of the refunded bonds at maturity or at a prior date or dates on which they have been called for redemption in accordance with their terms, in an amount and in a manner sufficient under the provisions securing the refunded bonds, so that the state's obligation to pay the same, from sources other than the escrow fund, is discharged.

(3) New debt may not be created by the issuance of refunding bonds in accordance with this section, but the refunding bonds must evidence the debt previously created and must be secured by the pledge of the full faith and credit and taxing powers of the state and secured in the same manner as the bonds refunded by other provisions of this part.

History: En. Sec. 21, Ch. 505, L. 1981; amd. Sec. 44, Ch. 298, L. 1983; amd. Sec. 27, Ch. 478, L. 1993.

Cross-References

Bond issues, Title 17, ch. 5.

Renewable resource loan debt service fund, 85-1-603.

85-1-621. Report. The department shall prepare a biennial report describing the status of the renewable resource grant and loan program. The report must describe ongoing projects and projects that have been completed during the biennium. The report must identify and rank in order of priority the projects for which the department has received applications. The report must also describe proposed projects and activities for the coming biennium and recommendations for necessary appropriations. A copy of the report must be submitted to the water policy interim committee in accordance with 5-11-210.

History: En. Sec. 22, Ch. 505, L. 1981; amd. Sec. 19, Ch. 573, L. 1985; amd. Sec. 58, Ch. 112, L. 1991; amd. Sec. 49, Ch. 349, L. 1993; amd. Sec. 28, Ch. 478, L. 1993; amd. Sec. 71, Ch. 545, L. 1995; amd. Sec. 8, Ch. 122, L. 2015; amd. Sec. 116, Ch. 261, L. 2021.

85-1-622. Penalty. A member, officer, attorney, or other employee of the board or the department may not, directly or indirectly, be the beneficiary of or receive any fee, commission, gift, or other consideration for or in connection with any transaction or business under this part other than the salary, fee, or other compensation that the person may receive as a member, officer, attorney, or employee. A person convicted of violating any provision of this section shall be punished by a fine not to exceed $2,000 or be imprisoned for not to exceed 2 years, or both.

History: En. Sec. 23, Ch. 505, L. 1981; amd. Sec. 2754, Ch. 56, L. 2009.

85-1-623. Repealed. Sec. 3, Ch. 437, L. 1995.

History: En. Sec. 1, Ch. 507, L. 1981; amd. Sec. 45, Ch. 298, L. 1983; amd. Sec. 15, Ch. 512, L. 1985; amd. Sec. 8, Ch. 491, L. 1989; amd. Sec. 29, Ch. 478, L. 1993.

85-1-624. Authorization of bonds. The board of examiners is authorized to issue and sell general obligation renewable resource bonds for the renewable resource grant and loan program created under Title 85, chapter 1, part 6, in accordance with the terms and conditions and in the manner provided in 85-1-617 from time to time and in amounts that, taking into consideration the principal amount of any renewable resource bonds then outstanding, will not cause the total aggregate principal amount of renewable resource bonds outstanding at any time to exceed $30 million.

History: En. Sec. 1, Ch. 437, L. 1995; amd. Sec. 1, Ch. 14, L. 1999; amd. Sec. 1, Ch. 113, L. 2003.

85-1-625 through 85-1-630 reserved.

85-1-631. Water storage state special revenue account created — revenues allocated — appropriations from account. (1) There is a water storage state special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the water storage state special revenue account:

(a) for the biennium beginning July 1, 2007, the proceeds of the resource indemnity and ground water assessment tax as provided in 15-38-106;

(b) money allocated from the resource indemnity trust fund interest earnings pursuant to 15-38-202 and all revenue of the works and other money as provided in 85-1-332; and

(c) 90% of the interest earned from the Montana water development state special revenue account established in 85-1-320.

(3) All revenue provided from 85-1-332(1)(e) and (1)(f) deposited in the water storage state special revenue account must be appropriated solely for the construction, operation, rehabilitation, expansion, maintenance, and modification of state-owned water storage projects.

(4) Money that was not encumbered or expended from the water storage state special revenue account during the previous biennium must remain in the account.

(5) Deposits to the water storage state special revenue account must be placed in short-term investments and accrue interest, which must be deposited in the water storage state special revenue account.

(6) The purpose of the water storage state special revenue account is to provide money exclusively for construction, operation, rehabilitation, expansion, maintenance, and modification of state-owned water storage projects.

History: En. Sec. 8, Ch. 659, L. 1991; amd. Sec. 30, Ch. 478, L. 1993; amd. Sec. 9, Ch. 144, L. 1999; amd. Sec. 22, Ch. 432, L. 2007; amd. Sec. 31, Ch. 775, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 31, Ch. 775, L. 2025. Amendment effective June 19, 2025.

Cross-References

Water storage policy, Title 85, ch. 1, part 7.

85-1-632. Exemption from environmental review. The department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing grants, loans, or bonds related to conservation, reclamation, and renewable resource activities pursuant to this part.

History: En. Sec. 3, Ch. 116, L. 2023.

Part 7
Water Storage Policy

85-1-701. Short title. This part may be cited as the "Water Storage Policy Act".

History: En. Sec. 1, Ch. 659, L. 1991.

85-1-702. Purpose. The purpose of this part is to define the role of water storage in solving water management problems and, if water storage projects provide the best solutions to those problems, to facilitate the development of the projects.

History: En. Sec. 2, Ch. 659, L. 1991.

85-1-703. Water storage policy. (1) The legislature recognizes that water resource needs are growing, existing water facilities are aging and in need of repair, and new water storage projects have become more difficult to complete. Other types of action will be needed to solve many emerging problems, but if water storage is the best way to meet growing water needs and solve problems, then it should be actively pursued.

(2) In determining the best solution for a particular water management problem, the state shall:

(a) carefully define the problem;
(b) identify all options to solve the problem, including water storage;
(c) determine whether water is physically and legally available to solve the problem; and
(d) select the option that best meets the following criteria:
(i) technical feasibility;
(ii) financial feasibility;
(iii) economic feasibility;
(iv) political feasibility;
(v) legal feasibility; and
(vi) environmental feasibility.

History: En. Sec. 3, Ch. 659, L. 1991.

85-1-704. Prioritization of water storage projects — governor's report. (1) The governor shall submit to the legislature a report in accordance with 5-11-210 identifying specific water storage projects proposed for development, including the rehabilitation of existing projects and new project proposals. The report must contain:

(a) a list of water storage project priorities;

(b) an implementation strategy for each priority project that identifies the resources (including specific budget requests), government actions, and other actions needed to accomplish the project; and

(c) a progress report on the development of water storage projects during the previous 2 years.

(2) In setting priorities among new water storage projects, the governor shall consider whether a project:

(a) solves a severe water problem;
(b) provides multiple uses and benefits;
(c) provides for public uses;
(d) shows strong evidence of broad citizen support;
(e) is able to obtain nonstate sources of funding;
(f) protects and seeks to enhance social, ecological, cultural, and aesthetic values;
(g) improves local and state economic development;
(h) could resolve Indian and federal reserved water rights issues;
(i) supports water conservation activities; and
(j) promotes the use of water reserved under Montana law.

(3) In setting priorities among water storage rehabilitation projects, the governor shall consider whether the project:

(a) is needed to protect public safety;
(b) has impacts if not repaired or rehabilitated; and
(c) accomplishes the goals listed in subsections (2)(a) through (2)(j).

(4) In establishing budget priorities for the allocation of state water storage development funds:

(a) first preference must be given to projects that resolve threats to life and property posed by high-hazard facilities that are in an unsafe condition;

(b) second preference must be given to projects that improve or expand existing water storage facilities; and

(c) third preference must be given to the planning and construction of new water storage facilities.

History: En. Sec. 4, Ch. 659, L. 1991; amd. Sec. 117, Ch. 261, L. 2021.

Cross-References

Water storage state special revenue account — allocation, 85-1-631.

Part 8
Lease Management Program

Part Cross-References

State lands — agricultural, grazing, and other surface leases, Title 77, ch. 6.

85-1-801. Statement of policy. It is the policy of the state that in the interest of accomplishing a self-supporting program from the leasing of project lands, the project lands must be appraised by the department at least once during the term of each lease. The purpose of the appraisals is to determine the lease value of project lands and the general condition of the lands.

History: En. Sec. 1, Ch. 301, L. 1995.

85-1-802. Leases authorized. (1) The department may lease all project lands appurtenant to a state-owned water project for purposes that the department considers appropriate.

(2) A lease of project lands to the department of fish, wildlife, and parks for public recreational use may not exceed 30 years. Other leases of project lands may not exceed 10 years.

History: En. Sec. 2, Ch. 301, L. 1995; amd. Sec. 1, Ch. 121, L. 1999.

85-1-803. Rulemaking. The department may adopt rules necessary to implement and administer the leasing of project lands. These rules may include but are not limited to rules governing the:

(1) growing of crops or grazing of livestock;

(2) establishment of responsibility for a lessee to pay the assessment of taxes for weed control;

(3) acquisition and use of water on project lands;

(4) leasing of project lands, except for lease renewals and transfers, by competitive bidding and the establishment of bid procedures and bid deposits;

(5) process for giving notice and for cancellation, termination, and renewal of leases, including existing leases on project lands;

(6) general form of the lease and the form and conditions of a bond when the department considers a bond necessary;

(7) changes or modifications in lease conditions or lease use; and

(8) placement and removal of improvements directly related to the necessary use of the project lands.

History: En. Sec. 3, Ch. 301, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

85-1-804. Appraisal of project lands — adjustment of lease fee. The department shall appraise project lands owned by the department and shall maintain records of the appraisals. Not less than once during the term of a lease, the department shall reappraise the project lands and adjust the lease fee accordingly. The department may not increase a lease fee for a current lessee more than 2% a year during any period of 10 consecutive years.

History: En. Sec. 4, Ch. 301, L. 1995.

85-1-805. Full market value required. The department shall determine the full market value of project lands. The department may not accept a bid that is below full market value.

History: En. Sec. 5, Ch. 301, L. 1995.

85-1-806. Withdrawal of lands from leasing. The department may withdraw project lands from leasing for a period of time as the department determines to be in the best interest of the state.

History: En. Sec. 6, Ch. 301, L. 1995.

85-1-807. Assignment of leases — subleasing not allowed. (1) A lease of project lands may be assigned on forms prescribed by the department. An assignment is not binding on the department unless the assignment is filed with and approved by the department. An assignment fee must be paid to the department at the time of filing the assignment.

(2) The department may not approve a contingent or collateral assignment of a lease.

(3) A lease may not be subleased.

History: En. Sec. 7, Ch. 301, L. 1995.

85-1-808. Changes in lease use not authorized — cancellation. (1) During the term of a lease, the use of the project lands may not be changed. A change in the use of the lands automatically voids the lease.

(2) The department may cancel a lease for any of the following causes:

(a) fraud, misrepresentation, or concealment of facts relating to issuance of the lease, which if known would have prevented its issuance in the form or to the party issued;

(b) subleasing project lands;

(c) placing of unauthorized improvements on project lands;

(d) using the lands for purposes other than those authorized by the lease;

(e) conviction of the lessee for a felony offense involving a dangerous drug, as defined in Title 50, chapter 32, and involving the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, or concealing of a dangerous drug on any portion of the lands;

(f) nonpayment of rental fees;

(g) violation of a lease condition;

(h) other causes that in the judgment of the department make the cancellation of the lease necessary in order to do justice to all parties concerned or to protect the interests of the state.

(3) Cancellation of a lease under this section does not entitle the lessee to a refund of rentals paid or exempt the lessee from the payment of rentals, penalties, or other compensation due the state.

History: **En. Sec. 8, Ch. 301, L. 1995.**

85-1-809. Improvements authorized — no compensation — removal. (1) A lessee of project lands may place on the lands a reasonable amount of improvements directly related to the necessary use of the lands as provided in the lease.

(2) The department is not liable to pay compensation to a lessee or a former lessee for improvements made to project lands.

(3) A former lessee is responsible to reclaim project lands to the condition existing prior to the placement of the improvements. If the former lessee fails to remove the improvements from the land within 60 days from the date of the expiration of the lease, all of the improvements become the property of the department unless the department for good cause extends the time for removal of the improvements. The department may require a former lessee to remove improvements made by the former lessee from project lands at the former lessee's expense.

History: **En. Sec. 9, Ch. 301, L. 1995.**

85-1-810. No pledge or mortgage of leasehold interest. A lessee of project lands may not pledge the lease or mortgage a leasehold interest in the project lands.

History: **En. Sec. 10, Ch. 301, L. 1995.**

85-1-811. Project lands lease and sales account. There is established a project lands lease and sales account within the state special revenue fund of the state treasury. All sale proceeds and lease fees collected under this part must be deposited in the account to pay the department's costs and expenses in administering this part.

History: **En. Sec. 11, Ch. 301, L. 1995; amd. Sec. 3, Ch. 378, L. 2021.**

85-1-812. Sale of leased cabin or home sites — rulemaking. (1) (a) Subject to subsection (7), the department shall make available for sale within a reasonable period of time project lands that are state land cabin or home sites on October 1, 2021, at the request of a lessee or an improvement owner and with the consent of any mortgagee or other owner of an interest in the cabin or home site improvements. The sale must attain full market value.

(b) The proceeds of any sale of cabin site improvements pursuant to this part must go to the owner of record of the improvements.

(2) The sale of a cabin or home site is exempt from the subdivision laws, except that the development of any new or additional water supply or sewage disposal system on the property must be approved pursuant to the review procedure, fee, and other requirements of Title 76, chapter 4, part 1.

(3) The department may adopt rules to ensure the sales process authorized pursuant to 85-1-812 and 85-1-813 is orderly and attains full market value for the sale of a cabin or home site.

(4) On a sale of a cabin or home site, the department may:

(a) grant a permanent easement across state lands to secure access using current routes; or

(b) convey an appurtenant, nonexclusive easement to the property from the nearest public road if:

(i) the department has authority to grant the easement; and

(ii) the conveyance of the easement does not overburden a right-of-way held by the state.

(5) The appraised value and minimum bid for a cabin or home site must include the value of the easement granted pursuant to subsection (4).

(6) (a) The lessee of the cabin or home site nominated for sale has the preference to match the high bid. If the lessee matches the high bid, bidding is reopened to all bidders, with the lessee retaining the right of preference to match the ultimate high bid and be awarded the sale.

(b) The current lessee of the cabin or home site who initiated the sale may cancel the sale by giving notice to the department at least 10 days prior to the day of the auction. When the sale is cancelled by the lessee, the lessee shall pay the costs incurred by the department for the preparation of the sale.

(c) For the sale of a cabin or home site, the department shall prepare and assume the cost of the land survey. The department may allow the survey to be paid for in advance by the lessee or the owner of any improvements if the survey is contracted through the department according to department specifications. If the parcel is sold but the purchaser is other than the lessee or the owner of the improvements, the cost of the survey must be included in the actual costs at closing, and the department shall refund the cost of the survey to the former lessee or the owner of the improvements.

(d) The department shall transfer water rights that are appurtenant to the cabin or home site to the purchaser on completion of the sale.

(e) The sale of a cabin or home site is exempt from the provisions of Title 75, chapter 1, parts 1 through 3.

(f) For purposes of this section, "cabin site improvements" has the meaning provided in 85-1-813.

(7) Before January 1, 2022, the department shall determine what cabin sites would be adversely affected by an expansion of a state water project. Lessees of those lots may not request them to be sold pursuant to this section.

History: En. Sec. 1, Ch. 378, L. 2021.

85-1-813. Valuation of cabin or home sites and improvements. (1) (a) Prior to the sale of project lands pursuant to 85-1-812, the department shall separately determine the full market value of the land and the value of the cabin site improvements existing on the land and the value of any necessary access easement across existing state lands from the nearest public road. The appraisal must be based on comparable sales of nearby existing properties with the hypothetical condition that the state parcel to be sold is accessible for all lawful purposes. The appraisal must determine the raw undeveloped value of the parcel and the value of the cabin site improvements.

(b) (i) In determining the values required by subsection (1)(a), the department shall establish a list of at least two third-party independent appraisers available to conduct the appraisal of the land and the cabin site improvements. The department shall provide a copy of the list to the cabin or home site lessee. The lessee shall provide the department with a list of at least 50% of the appraisers from the department's list. The department shall select the appraiser to conduct the appraisal from the list provided by the lessee.

(ii) The department shall assume the proportionate cost of the appraisal of the state land valuation. The lessee shall assume the proportionate cost of the appraisal of the valuation of the cabin site improvements.

(c) The department shall disclose the results of the appraisal to the cabin or home site lessee of the land for sale and shall give that lessee notice and opportunity for an administrative hearing before the department to contest those valuations. The department shall review the arguments and evidence received at the hearing. The department shall make a final determination on the values of the land and cabin site improvements.

(2) (a) If the lessee consents to the terms and conditions of the proposed sale and the valuation of cabin site improvements, the sale must proceed utilizing the department's final determination of the values, and the lessee is obligated to transfer its interest in the cabin site improvements existing on the cabin or home site lease according to the board's final determination of their value.

(b) Nothing in this section prohibits the lessee from accepting a price for the cabin site improvements existing on the cabin or home site that is less than the department's final determination of value.

(3) For purposes of 85-1-812 and 85-1-813, "cabin site improvements" includes but is not limited to:

(a) a home or residence;
(b) outbuildings and structures;
(c) sleeping cabins;
(d) utilities;
(e) water systems;
(f) septic systems;
(g) docks; and
(h) landscaping.

History: En. Sec. 2, Ch. 378, L. 2021.

Part 9
Western Montana Conservation Commission Act

Part Cross-References

Western Montana Conservation Commission, 2-15-3311.

85-1-901. *(Temporary)* **Short title.** This part may be cited as the "Western Montana Conservation Commission Act". *(Terminates June 30, 2029—sec. 12, Ch. 428, L. 2023.)*

History: En. Sec. 2, Ch. 428, L. 2023.

85-1-902. *(Temporary)* **Purpose.** The purpose of the western Montana conservation commission is to protect the existing high quality of western Montana's aquatic resources. *(Terminates June 30, 2029—sec. 12, Ch. 428, L. 2023.)*

History: En. Sec. 3, Ch. 428, L. 2023.

85-1-903. *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Aquatic resources" means all beneficial uses of water, including but not limited to water quality and water supply; recreational, scenic, and aesthetic values; and fish, wildlife, and other organisms, including the prevention and management of aquatic invasive species.

(2) "Commission" means the western Montana conservation commission established in 2-15-3311.

(3) "Department" means the department of natural resources and conservation.

(4) "Western Montana" means all land and water areas west of the continental divide and within the Montana portion of the headwaters of the Columbia River basin. *(Terminates June 30, 2029—sec. 12, Ch. 428, L. 2023.)*

History: En. Sec. 4, Ch. 428, L. 2023.

85-1-904. *(Temporary)* **Duties of the commission.** Duties of the commission are to:

(1) monitor the existing condition of natural resources in western Montana and coordinate development of a 5-year monitoring strategy. This strategy must be developed with input from all land and water management agencies within western Montana and identify proposed and needed monitoring that emphasizes but is not limited to the aquatic resources of western Montana.

(2) support, promote, and ensure the continuation of a comprehensive aquatic invasive species prevention program in western Montana to assure it is implemented effectively and efficiently to protect aquatic resources, local economies, and native species;

(3) encourage close cooperation and coordination between federal, state, provincial, tribal, and local resource managers for the establishment of consistent natural resource conservation practices, comprehensive monitoring, data collection, and interpretation;

(4) encourage and work for international coordination between the state of Montana and the province of British Columbia concerning the undertaking of natural resource monitoring and use of consistent standards for management of natural resources throughout the region that may have influences on aquatic resources within western Montana;

(5) provide focused support and programming to the aquatic and natural resources of the Flathead River basin given its economic, cultural, and natural resource importance to the state of Montana;

(6) support economic development and use of western Montana's resources to their fullest extent without compromising the aquatic resources of western Montana;

(7) undertake, with the commission's discretion, investigations of resource utilization and hold public hearings concerning the condition of aquatic resources and other natural resources in western Montana;

(8) use the result of the duties performed pursuant to subsections (1) through (7) to create public-private partnerships that:

(a) result in projects to reduce point source water pollution and nonpoint source water pollutions, as those terms are defined in 75-5-103;

(b) prevent the spread of invasive species; and

(c) maintain, enhance, restore, expand, or benefit the aquatic resources of western Montana;

(9) implement in collaboration with the department policies pursuant to 85-1-101, through the administration of portions of the renewable resource grant and loan program under 85-1-601, within western Montana;

(10) implement in collaboration with the department the portion of state policy expressed in the reclamation and development grants program act under 90-2-1102 through administration of grants and loans within western Montana;

(11) submit to the governor, the environmental quality council, and the water policy interim committee, in accordance with 5-11-210, a biennial report that includes:

(a) a summary of information gathered in fulfillment of its duties under this section;

(b) information on monitoring activities within western Montana concerning the condition of the region's natural resources with particular emphasis on aquatic resources;

(c) the identification of land use, land development, and economic trends in western Montana;

(d) recommendations the commission considers appropriate for fulfillment of its duties and for the continued preservation of aquatic resources in western Montana; and

(e) an accounting of all money received and disbursed, by source and purpose, for the period since the last biennial report; and

(12) meet at least semiannually within western Montana at locations selected by the commission. *(Terminates June 30, 2029—sec. 12, Ch. 428, L. 2023.)*

History: **En. Sec. 5, Ch. 428, L. 2023.**

85-1-905. *(Temporary)* **Commission authority.** (1) The commission may request the governor petition a state natural resource agency or that agency's rulemaking body to promulgate, amend, or repeal a rule addressing natural resource issues identified by the commission.

(2) The commission may petition a county, conservation district, or tribal council to promulgate, amend, or repeal local ordinances to resolve natural resource issues identified by the commission.

(3) The commission shall participate with the department in preparation of a state budget pursuant to Title 17, chapter 7, part 1, in order to identify disbursements necessary to complete the commission's purpose and duties.

(4) Subject to appropriation by the legislature, the commission may receive and expend disbursements, donations, gifts, grants, and other funds necessary to fulfill its purpose and duties. *(Terminates June 30, 2029—sec. 12, Ch. 428, L. 2023.)*

History: **En. Sec. 6, Ch. 428, L. 2023.**

85-1-906. *(Temporary)* **Special county government authority.** The governing body of a county within western Montana may allocate to the commission a portion of any funds available from coal severance tax allocations or other sources that is designated for project or planning activities. *(Terminates June 30, 2029—sec. 12, Ch. 428, L. 2023.)*

History: En. Sec. 7, Ch. 428, L. 2023.

85-1-907. *(Temporary)* **Cooperation with other agencies and organizations.** To fulfill its duties, the commission shall develop and maintain cooperative programs with federal, state, provincial, tribal, and local agencies or organizations that are responsible for natural resource management and monitoring in western Montana. *(Terminates June 30, 2029—sec. 12, Ch. 428, L. 2023.)*

History: En. Sec. 8, Ch. 428, L. 2023.

CHAPTER 2
SURFACE WATER AND GROUND WATER

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Chapter Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.
Smith River Management Act, Title 23, ch. 2, part 4.

Part 1
General Provisions

85-2-101. Declaration of policy and purpose. (1) Pursuant to Article IX of the Montana constitution, the legislature declares that any use of water is a public use and that the waters within the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided in this chapter.

(2) A purpose of this chapter is to implement Article IX, section 3(4), of the Montana constitution, which requires that the legislature provide for the administration, control, and regulation of water rights and establish a system of centralized records of all water rights. The legislature declares that this system of centralized records recognizing and establishing all water rights is essential for the documentation, protection, preservation, and future beneficial use and development of Montana's water for the state and its citizens and for the continued development and completion of the comprehensive state water plan.

(3) It is the policy of this state and a purpose of this chapter to encourage the wise use of the state's water resources by making them available for appropriation consistent with this chapter and to provide for the wise utilization, development, and conservation of the waters of the state for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystems. In pursuit of this policy, the state encourages the development of facilities that store and conserve waters for beneficial use, for the maximization of the use of those waters in Montana, for the stabilization of streamflows, and for ground water recharge.

(4) Pursuant to Article IX, section 3(1), of the Montana constitution, it is further the policy of this state and a purpose of this chapter to recognize and confirm all existing rights to the use of any waters for any useful or beneficial purpose.

(5) It is the intent of the legislature that the statutory determinations for issuing new water use permits and authorizing changes do not require the adjudication of all water rights in the source of supply. The legislature recognizes the unique character and nature of water resources of the state. Because water is a resource that is subject to use and reuse, such as through return flows, and because at most times all water rights on a source will not be exercised to their full extent simultaneously, it is recognized that an adjudication is not a water availability study. Consequently, the legislature has provided an administrative forum for the factual investigation into whether water is available for new uses and changes both before and after the completion of an adjudication in the source of supply. To allow for orderly permitting in the absence of a complete adjudication in the source of supply, permits issued under this chapter are provisional. A provisional permit is subject to reduction, modification, or revocation by the department as provided in 85-2-313 upon completion of the general adjudication.

(6) It is the intent of the legislature that the state, to fulfill its constitutional duties and to exercise its historic powers and responsibilities to its citizens living on and off reservations,

comprehensively adjudicate existing water rights and regulate water use within the state. It is further the legislature's intent that the state, to the fullest extent possible, retain and exercise its authority to regulate water use and provide forums for the protection of water rights, including federal non-Indian and Indian water rights, and resolve issues concerning its authority over water rights and permits, both prior to and after the final adjudication of water rights. In furtherance of this legislative intent:

(a) all permits issued are provisional, and it is the intent of the legislature that this status provide enforceable legal protection for existing rights; and

(b) any judicial determination of the state's authority to issue provisional permits on or off reservations should be decided in the appropriate state forum.

History: En. Sec. 2, Ch. 452, L. 1973; R.C.M. 1947, 89-866; amd. Sec. 1, Ch. 497, L. 1997.

Cross-References

Rights for useful or beneficial purpose recognized and confirmed, Art. IX, sec. 3, Mont. Const.
Water quality, Title 75, ch. 5.
Aquatic ecosystem protections, Title 75, ch. 7.
Policy considerations, 85-1-101.
Interpretation of title, 85-1-103.
State water plan, 85-1-203.
Department powers over state waters, 85-1-204.
Adjudication of water rights, Title 85, ch. 2, part 2.
Appropriations, permits, and certificates of water rights, Title 85, ch. 2, part 3.
Utilization of water, Title 85, ch. 2, part 4.
Ground water, Title 85, ch. 2, part 5.
Indian and federal water rights — water rights within Indian reservations, Title 85, ch. 2, part 7.

85-2-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" or "appropriation" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;

(d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(2) "Appropriation right" has the same meaning as "water right" as defined in this section.

(3) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(4) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

(5) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) a use of water through a temporary lease of an appropriation right approved by the department pursuant to 85-2-428;

(f) a use of water for aquifer recharge or mitigation; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(6) "Certificate" means a certificate of water right issued by the department.

(7) (a) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(b) The term does not include a change in water use related to the method of irrigation.

(8) "Commission" means the fish and wildlife commission provided for in 2-15-3402.

(9) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information for the department to begin evaluating the information.

(10) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(11) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(12) "Developed spring" means any point where ground water emerges naturally, that has subsequently been physically altered, and from which ground water flows under natural pressures or is artificially withdrawn.

(13) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(14) "Ground water" means any water that is beneath the ground surface.

(15) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(16) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(17) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

(18) (a) "National forest system lands" means all lands within Montana that are owned by the United States and administered by the secretary of agriculture through the forest service.

(b) The term does not include any lands within the exterior boundaries of national forest system units that are not owned by the United States and administered by the secretary of agriculture through the forest service.

(19) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(20) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(21) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(22) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

(23) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(24) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(25) "Stream depletion zone" means an area where hydrogeologic modeling concludes that as a result of a ground water withdrawal, the surface water would be depleted by a rate equal to at least 30% of the ground water withdrawn within 30 days after the first day a well or developed spring is pumped at a rate of 35 gallons a minute.

(26) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(27) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(28) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(29) "Water division" means a drainage basin as defined in 3-7-102.

(30) "Water judge" means a judge as provided for in Title 3, chapter 7.

(31) "Water master" means a master as provided for in Title 3, chapter 7.

(32) (a) "Water right" means the right to appropriate water pursuant to an existing right, a permit, a certificate of water right, a state water reservation, or a compact.

(b) The term does not include an authorized notice of intent to appropriate groundwater pursuant to 85-2-306.

(33) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(34) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

History: En. Sec. 3, Ch. 452, L. 1973; amd. Sec. 1, Ch. 192, L. 1974; amd. Sec. 1, Ch. 485, L. 1975; amd. Sec. 1, Ch. 416, L. 1977; amd. Sec. 7, Ch. 460, L. 1977; R.C.M. 1947, 89-867; amd. Sec. 1, Ch. 327, L. 1979; amd. Sec. 1, Ch. 552, L. 1979; amd. Sec. 29, Ch. 697, L. 1979; amd. Sec. 1, Ch. 573, L. 1985; amd. Sec. 1, Ch. 658, L. 1989; amd. Sec. 2, Ch. 28, L. 1991; amd. Sec. 2, Ch. 308, L. 1991; amd. Sec. 1, Ch. 543, L. 1991; amd. Sec. 1, Ch. 805, L. 1991; amd. Sec. 1, Ch. 370, L. 1993; amd. Sec. 1, Ch. 629, L. 1993; amd. Sec. 440, Ch. 418, L. 1995; amd. Sec. 4, Ch. 487, L. 1995; amd. Sec. 2, Ch. 497, L. 1997; amd. Sec. 1, Ch. 78, L. 2001; amd. Sec. 3, Ch. 70, L. 2005; amd. Sec. 1, Ch. 85, L. 2005; amd. Sec. 3, Ch. 213, L. 2007; amd. Sec. 1, Ch. 391, L. 2007; amd. Sec. 1, Ch. 448, L. 2007; amd. Sec. 1, Ch. 251, L. 2009; amd. Sec. 2, Ch. 29, L. 2011; amd. Sec. 23, Ch. 235, L. 2013; amd. Sec. 1, Ch. 335, L. 2013; amd. Sec. 1, Ch. 409, L. 2013; amd. Sec. 1, Ch. 421, L. 2013; amd. Sec. 1, Ch. 69, L. 2017; amd. Sec. 1, Ch. 59, L. 2019; amd. Sec. 2, Ch. 347, L. 2025; amd. Sec. 6, Ch. 708, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 2, Ch. 347, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 6, Ch. 708, L. 2025. Amendment effective January 1, 2026.

Applicability: Section 9, Ch. 708, L. 2025, provided: "[This act] applies to subdivisions that are reviewed pursuant to Title 76, chapter 3, on or after [the effective date of this act]." Effective January 1, 2026.

85-2-103. Measurement of water. (1) After July 1, 1899, a cubic foot of water (7.48 gallons) per second of time shall be the legal standard for the measurement of water in this state.

(2) Where water rights expressed in statutory or miner's inches have been granted, 100 statutory or miner's inches shall be considered equivalent to a flow of 2.5 cubic feet (18.7 gallons) per second, 200 statutory or miner's inches shall be considered equivalent to a flow of 5 cubic feet (37.4 gallons) per second, and this proportion shall be observed in determining the equivalent flow represented by any number of statutory or miner's inches.

(3) The provisions of this section shall not affect or change the measurement of water decreed by a court prior to July 1, 1899, but such decreed water shall be measured according to the law in force at the time such decree was made and entered.

History: (1)En. Sec. 1, p. 126, L. 1899; re-en. Sec. 4854, Rev. C. 1907; re-en. Sec. 7107, R.C.M. 1921; re-en. Sec. 7107, R.C.M. 1935; Sec. 89-817, R.C.M. 1947; (2)Ap. p. Sec. 2, p. 126, L. 1899; re-en. Sec. 4855, Rev. C. 1907; re-en. Sec. 7108, R.C.M. 1921; re-en. Sec. 7108, R.C.M. 1935; Sec. 89-818, R.C.M. 1947; Ap. p. Sec. 10, Ch. 185, L. 1907; re-en. Sec. 4877, Rev. C. 1907; re-en. Sec. 7132, R.C.M. 1921; re-en. Sec. 7132, R.C.M. 1935; Sec. 89-843, R.C.M. 1947; (3)En. Sec. 3, p. 126, L. 1899; re-en. Sec. 4856, Rev. C. 1907; re-en. Sec. 7109, R.C.M. 1921; re-en. Sec. 7109, R.C.M. 1935; Sec. 89-819, R.C.M. 1947; R.C.M. 1947, 89-817, 89-818, 89-819, 89-843(part).

Cross-References

Statement of claim, 85-2-224.
Final decree, 85-2-234.
Priority, 85-2-401.

85-2-104. Repealed. Sec. 24, Ch. 573, L. 1985.

History: En. Sec. 2, Ch. 552, L. 1979.

85-2-105. Water policy interim committee duties. (1) The water policy interim committee established in 5-5-231 shall meet as often as necessary, including during the interim between sessions, to perform the duties specified within this section.

(2) On a continuing basis, the water policy interim committee may:

(a) advise the legislature on the adequacy of the state's water policy and on important state, regional, national, and international developments that affect Montana's water resources;

(b) oversee the policies and activities of the department, other state executive agencies, and other state institutions as those policies and activities affect the water resources of the state;

(c) assist with interagency coordination related to Montana's water resources; and

(d) communicate with the public on matters of water policy as well as the water resources of the state.

(3) On a regular basis, the water policy interim committee shall:

(a) analyze and comment on the state water plan required by 85-1-203, when filed by the department;

(b) analyze and comment on the report of the status of the state's renewable resource grant and loan program required by 85-1-621, when filed by the department;

(c) analyze and comment on water-related research undertaken by any state agency, institution, college, or university;

(d) analyze, verify, and comment on the adequacy of and information contained in the water information system maintained by the natural resource information system under 90-15-305; and

(e) provide recommendations and a report, if one is written, in accordance with 5-5-216 for studies completed by the committee.

History: En. Sec. 20, Ch. 573, L. 1985; amd. Sec. 59, Ch. 112, L. 1991; amd. Sec. 31, Ch. 478, L. 1993; amd. Sec. 441, Ch. 418, L. 1995; amd. Sec. 72, Ch. 545, L. 1995; amd. Sec. 1, Ch. 45, L. 1997; amd. Sec. 1, Ch. 275, L. 1999; amd. Sec. 3, Ch. 285, L. 2009; amd. Sec. 9, Ch. 122, L. 2015; amd. Sec. 118, Ch. 261, L. 2021.

Cross-References

Appointment and composition of joint subcommittees, 5-5-211.
Environmental Quality Council, Title 5, ch. 16.

85-2-106 through 85-2-110 reserved.

85-2-111. Department powers. (1) The department may:

(a) enter into agreements with federal, state, or local agencies necessary to carry out this chapter;

(b) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other public or private source for the purposes of this chapter.

(2) The department shall, pursuant to 85-20-1901 and 85-20-1902, recognize the jurisdiction of the Flathead reservation water management board over water rights, including permitting of new uses, changes of existing uses, enforcement of water right calls, and all aspects of enforcement within the exterior boundaries of the Flathead Indian reservation.

History: En. Sec. 4, Ch. 452, L. 1973; R.C.M. 1947, 89-868(2); amd. Sec. 4, Ch. 294, L. 2015.

Cross-References

Federal revenue and endowments, Title 17, ch. 3.
Contracts with United States, 85-1-221.

85-2-112. Department duties. The department shall:

(1) enforce and administer this chapter and rules adopted under 85-2-113, subject to the powers and duties of the supreme court under 3-7-204;

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, claims of existing rights, and proceedings under this chapter and prescribe the information to

be contained in any application, claim of existing right, or other document to be filed with the department under this chapter not inconsistent with the requirements of this chapter;

(3) establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, claims of existing rights, applications, and other documents filed in its office under this chapter;

(4) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

(5) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing claims of existing rights with a district court under this chapter;

(6) adopt rules necessary to reject, modify, or condition permit applications in highly appropriated basins or subbasins as provided in 85-2-319.

History: En. Sec. 4, Ch. 452, L. 1973; R.C.M. 1947, 89-868(1); amd. Sec. 30, Ch. 697, L. 1979; amd. Sec. 3, Ch. 268, L. 1981; amd. Sec. 1, Ch. 448, L. 1983; amd. Sec. 17, Ch. 573, L. 1985; amd. Sec. 442, Ch. 418, L. 1995; amd. Sec. 2, Ch. 45, L. 1997.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.
Adjudication of water rights, Title 85, ch. 2, part 2.
Department assistance to Water Judges, 85-2-243.
Appropriations, permits, and certificates of water rights, Title 85, ch. 2, part 3.

85-2-113. Department powers and duties. (1) The department may prescribe fees or service charges for any public service rendered by the department under this chapter, including fees for the filing of applications or for the issuance of permits and certificates, for rulemaking hearings under 85-2-319, for administrative hearings conducted under this chapter, for investigations concerning permit revocation, for field verification of issued and completed permits, and for all change approvals. There may not be fees for any action taken by the department at the request of the water judge or for the issuance of certificates of existing rights.

(2) The department may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices, except that the department may not require a meter on a water well outside of a controlled ground water area or proposed controlled ground water area unless the maximum appropriation of the well is in excess of the limitation contained in 85-2-306;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of ground water.

(3) The department shall adopt rules providing for and governing temporary emergency appropriations, including for emergency fire training and emergency fire-related operations, without prior application for a permit, necessary to protect lives or property.

(4) (a) The department shall adopt rules to require the owner or operator of an appropriation facility on a watercourse or portions of a watercourse identified as chronically dewatered by the department under 85-2-150 to acquire, install, and maintain a suitable controlling and measuring device no later than 2 years after designation of the watercourse or portions of the watercourse as chronically dewatered, except that when the department specifically finds that the installation of measuring devices along the entire watercourse or portions of the watercourse is not practicable within the 2-year deadline, it may establish a later deadline.

(b) For the purposes of subsection (4), an appropriation facility includes but is not limited to any method used to divert, impound, or withdraw water from a watercourse. Hydroelectric facilities that are using recognized methods of flow measurement, as determined by the department, are in compliance with subsection (4).

History: En. Sec. 5, Ch. 452, L. 1973; amd. Sec. 1, Ch. 238, L. 1974; amd. Sec. 2, Ch. 485, L. 1975; R.C.M. 1947, 89-869; amd. Sec. 1, Ch. 292, L. 1979; amd. Sec. 31, Ch. 697, L. 1979; amd. Sec. 2, Ch. 448, L. 1983; amd. Sec. 2, Ch. 543, L. 1991; amd. Sec. 2, Ch. 805, L. 1991; amd. Sec. 443, Ch. 418, L. 1995; amd. Sec. 2, Ch. 161, L. 2005; amd. Sec. 1, Ch. 264, L. 2017.

Cross-References

Emergency or temporary rules, 2-4-303.
Water Courts, Title 3, ch. 7.
Water quality, Title 75, ch. 5.
Department assistance to Water Judges, 85-2-243.
Waste and contamination of ground water prohibited, 85-2-505.

85-2-114. Judicial enforcement. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a provision of this chapter, it may petition the district court supervising the distribution of water among appropriators from the source to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use;

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take steps that may be necessary to remedy the waste, unlawful use, or interference; or

(c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.

(2) Upon the issuance of an order or injunction, the department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it. The notice constitutes legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin the waste, unlawful use, interference, or violation.

(4) The county attorney or the attorney general may bring suit to enjoin the waste, unlawful use, interference, or violation or bring an action under 85-2-122(1) without being requested to do so by the department.

(5) A county attorney who takes action pursuant to subsection (3) or (4) may request assistance from the attorney general.

(6) When enforcing the provisions of this section, the department, the county attorney, and the attorney general shall give priority to protecting the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation.

(7) After considering the provisions of subsection (6), the department may attempt to obtain voluntary compliance through warning, conference, or any other appropriate means before petitioning the district court under subsection (1). An attempt to obtain voluntary compliance under this subsection must extend over a period of at least 7 days and may not exceed 30 working days.

(8) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.

(9) The provisions of this section do not limit a water right owner from seeking relief, including injunctive relief, in district court under Title 27, chapter 19, or this chapter.

History: En. Sec. 33, Ch. 452, L. 1973; R.C.M. 1947, 89-897; amd. Sec. 32, Ch. 697, L. 1979; amd. Sec. 1, Ch. 677, L. 1991; amd. Sec. 1, Ch. 457, L. 2001; amd. Sec. 3, Ch. 103, L. 2009; amd. Sec. 5, Ch. 294, L. 2015; amd. Sec. 1, Ch. 266, L. 2019.

Cross-References

Water Courts — jurisdiction, Title 3, ch. 7, part 5.
Injunctions, Title 27, ch. 19.
Department powers over state waters, 85-1-204.
Waste and contamination of ground water prohibited, 85-2-505.

85-2-115. Entry on land. Any employee or agent of the department authorized by the director may enter upon any land to carry out the purpose of this chapter, including but not limited to entry to make inspections the department considers necessary of proposed works, source of water, location of the proposed use, construction of works, and other inspections to ascertain whether or not persons are complying with this chapter. The department or its agent shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to any property.

History: **En. Sec. 34, Ch. 452, L. 1973; R.C.M. 1947, 89-898.**

Cross-References

General duty of care, 28-1-201.

85-2-116. Legal assistance. (1) When requested by the department, the attorney general and the county attorneys within their respective counties shall perform legal services and conduct legal proceedings necessary to carry out the purposes of this chapter. The department may also employ legal counsel to enforce this chapter and to conduct proceedings under it.

(2) If an appropriator who is a citizen of Montana becomes involved in a controversy to which any agency of the federal government or another state is a party, the department may in its discretion intervene as a party or provide necessary legal assistance to the citizen of Montana.

History: **En. Sec. 35, Ch. 452, L. 1973; amd. Sec. 9, Ch. 460, L. 1977; R.C.M. 1947, 89-899.**

Cross-References

Attorney General — general duties, 2-15-501.
Office of County Attorney, Title 7, ch. 4, part 27.
Negotiation with federal government, 85-2-703.

85-2-117. Water right records for filing with local clerk and recorder. Upon payment of a fee established pursuant to 85-2-113, a county clerk and recorder of the county where the point of diversion or place of use is located or in which a transfer of water right occurred may require the department to provide a report of all water permits, certificates, change approvals, or water right ownership update forms issued or processed by the department pursuant to Title 85, chapter 2, parts 3 and 4.

History: **En. Sec. 12, Ch. 805, L. 1991; amd. Sec. 4, Ch. 70, L. 2005.**

85-2-118 through 85-2-120 reserved.

85-2-121. Administrative proceedings. The Montana Administrative Procedure Act governs administrative proceedings conducted under parts 1 through 4 of this chapter, except that the common law and statutory rules of evidence shall apply only upon stipulation of all parties to a proceeding.

History: **En. Sec. 36, Ch. 452, L. 1973; amd. Sec. 13, Ch. 485, L. 1975; amd. Sec. 9, Ch. 416, L. 1977; R.C.M. 1947, 89-8-100.**

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.
Evidence, Title 26.

85-2-122. Penalties. (1) Except as provided in 85-2-410(6), a person who violates or refuses or neglects to comply with the provisions of 85-2-114, any order of the department, or any rule of the department is subject to a civil penalty not to exceed $1,000 per violation. Each day of violation constitutes a separate violation.

(2) Except as provided in subsection (3), fines collected by the department or a district court under subsection (1) must be deposited in the account established in 85-2-318 for use by the department in the enforcement of 85-2-114.

(3) If a fine is collected by an independent action brought by:

(a) the county attorney, the fine must be deposited in the general fund of the county; or

(b) the county attorney with assistance from the attorney general or by the attorney general, the fine must be deposited in the water right enforcement account created in 44-4-1101 and must be used to enforce the provisions of 85-2-114.

History: **En. Sec. 37, Ch. 452, L. 1973; R.C.M. 1947, 89-8-101; amd. Sec. 21, Ch. 573, L. 1985; amd. Sec. 2, Ch. 677, L. 1991; amd. Sec. 444, Ch. 418, L. 1995; amd. Sec. 2, Ch. 381, L. 2001; amd. Sec. 2, Ch. 457, L. 2001; amd. Sec. 4, Ch. 103, L. 2009.**

Cross-References

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
When no penalty specified, 46-18-212.

85-2-123. Deposit of fees and penalties. Except as provided in 85-2-122 and 85-2-124, all fees and penalties collected under this chapter must be deposited in the water right appropriation account established in 85-2-318. Except for fines collected by a district court under 85-2-122, all penalties or fines imposed by any court other than a justice's court for a violation of this chapter must be deposited in the general fund of the county where the court presides and must be disposed of in the same manner as any other penalty or fine.

History: **En. Sec. 38, Ch. 452, L. 1973; R.C.M. 1947, 89-8-102; amd. Sec. 3, Ch. 448, L. 1983; amd. Sec. 2, Ch. 24, L. 1985; amd. Sec. 59, Ch. 557, L. 1987; amd. Sec. 3, Ch. 677, L. 1991; amd. Sec. 26, Ch. 389, L. 1999; amd. Sec. 3, Ch. 457, L. 2001.**

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.
Fund structure, 17-2-102.

85-2-124. Costs and fees for environmental impact statements. (1) Whenever the department determines that the filing of an application or a combination of applications for a permit or approval under this chapter requires the preparation of an environmental impact statement as prescribed by the Montana Environmental Policy Act and the application or combination of applications involves the use of 4,000 or more acre-feet per year and 5.5 or more cubic feet per second of water, the applicant shall follow the process and shall pay to the department the costs or fees for the environmental impact statement as provided in Title 75, chapter 1, parts 1 and 2. The payment of costs and fees for the environmental impact statement must be deposited in the state special revenue fund to be used by the department only to comply with the Montana Environmental Policy Act in connection with the application or applications.

(2) Costs or fees as prescribed by this section may not be assessed against an applicant for a permit or approval if the applicant has also filed an application for a certificate of compliance pursuant to the Montana Major Facility Siting Act and the appropriation or use of water involved in the application or applications for permit or approval has been or will be studied by the department pursuant to that act.

(3) Failure to submit the costs or fees as required by this section voids the application or applications.

(4) The department may in its discretion rely upon the environmental studies, investigations, reports, and assessments made by any other state agency or any person, including any applicant, in the preparation of its environmental impact statement.

History: **En. 89-8-102.2 by Sec. 1, Ch. 356, L. 1975; amd. Sec. 1, Ch. 117, L. 1977; R.C.M. 1947, 89-8-102.2; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 448, L. 1983; amd. Sec. 6, Ch. 573, L. 1985; amd. Sec. 15, Ch. 217, L. 2003; amd. Sec. 19, Ch. 337, L. 2005.**

Cross-References

Protection and improvement of environment, Art. IX, sec. 1, Mont. Const.
Contracts, Title 28, ch. 2, 3.
Environmental impact statements, Title 75, ch. 1, part 2.
Montana Major Facility Siting Act, Title 75, ch. 20.

85-2-125. Recovery of costs and attorney fees by prevailing party. (1) If a final decision of the department on an application for a permit or a change in appropriation right is appealed to district court, the district court may award the prevailing party reasonable costs and attorney fees.

(2) The party obtaining injunctive relief in an action to enforce a water right must be awarded reasonable costs and attorney fees. For the purposes of this section, "enforce a water right" means an action by a party with a water right to enjoin the use of water by a person that does not have a water right.

History: **En. 89-8-100.1 by Sec. 11, Ch. 416, L. 1977; R.C.M. 1947, 89-8-100.1; amd. Sec. 5, Ch. 487, L. 1995; amd. Sec. 1, Ch. 100, L. 2005; amd. Sec. 1, Ch. 45, L. 2007; amd. Sec. 1, Ch. 360, L. 2011.**

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

85-2-126 through 85-2-130 reserved.

85-2-131. Application for change of watercourse name. (1) All applications for the change of name of any watercourse or natural source of water supply, including natural streams, dry coulees, springs, lakes, rivers, or creeks which lie wholly within the limits of one county must be made to the district court of the county where the watercourse or other natural source of water supply, the name of which is proposed to be changed, or some part thereof is situated. The petition must state in ordinary and concise language:

(a) a description of the watercourse or other natural source of water supply, the name of which is proposed to be changed, identifying the same as near as may be by natural monuments;

(b) the present name of the stream or other natural source of water supply and the name to which the petitioners desire the same to be changed, together with the reasons for the desired change of name;

(c) the names of all persons or corporations owning real estate abutting upon or water rights upon the same whose titles appear of record in the office of the county clerk and recorder in the county in which the watercourse or other natural source of water supply, or some part thereof, is situated.

(2) The petition must be signed by not less than 10 owners of real property abutting upon said watercourse or other natural source of water supply or owning water rights upon the same.

(3) The insufficiency of the petition in any of the above respects shall not be held to defeat the jurisdiction of the court.

History: En. Sec. 1, Ch. 101, L. 1911; re-en. Sec. 9968, R.C.M. 1921; re-en. Sec. 9968, R.C.M. 1935; R.C.M. 1947, 93-100-6.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Role and duties of County Clerk and Election Administrator, 7-4-2611.

85-2-132. Change of watercourse name — public notice. When a petition under 85-2-131 is filed in the district court, the court or the judge shall designate some newspaper of general circulation in the county that is most likely to give all interested parties notice of the proceedings and shall order that notice be published in that newspaper as provided in this section. The judge may require any other notice that seems reasonable and shall fix a time at which objections to the granting of the petition for the change of name must be heard. A copy of the petition, together with a notice of the time set for hearing objections, must be published in the newspaper designated by the court or judge for that purpose at least once a week for 4 successive weeks, and other notice of the proceedings must be given that the court or judge may require.

History: En. Sec. 2, Ch. 101, L. 1911; re-en. Sec. 9969, R.C.M. 1921; re-en. Sec. 9969, R.C.M. 1935; R.C.M. 1947, 93-100-7; amd. Sec. 2755, Ch. 56, L. 2009.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

85-2-133. Change of watercourse name — hearing. At the time set for hearing or at any time prior thereto, objections may be filed by any person who can, in such objections, show to the court or judge good reason against such change of name. The application and the objections must be heard at such time as the court or judge may appoint. On hearing, the court or judge may examine on oath any of the petitioners, remonstrants, objectors, or other persons touching the application and may make an order changing the name or dismissing the application as to the court or judge may seem right and proper.

History: En. Sec. 3, Ch. 101, L. 1911; re-en. Sec. 9970, R.C.M. 1921; re-en. Sec. 9970, R.C.M. 1935; R.C.M. 1947, 93-100-8.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

85-2-134. Change of watercourse name — judgment to be filed with county clerk. If the change of name of a watercourse is ordered, a copy of the judgment, duly certified by the clerk of the court, must be filed with the county clerk and recorder of the county in which the watercourse or other natural source of water supply is situated, and the clerk of the court shall, annually, in January, make a return to the office of the secretary of state of all changes of names made in the district court of the clerk's county under this section.

History: En. Sec. 4, Ch. 101, L. 1911; re-en. Sec. 9971, R.C.M. 1921; re-en. Sec. 9971, R.C.M. 1935; R.C.M. 1947, 93-100-9; amd. Sec. 2756, Ch. 56, L. 2009.

Cross-References

Duties of Secretary of State, 2-15-401.

Role and duties of County Clerk and Election Administrator, 7-4-2611.

85-2-135 through 85-2-140 reserved.

85-2-141. Water leasing program. (1) There is a water leasing program administered by the department on behalf of the state of Montana.

(2) The department may acquire rights to water needed for leasing under this program:

(a) through appropriation of water in its own name;

(b) by agreement with or purchase from another holder of water rights; or

(c) by contract with the United States for water held in federal reservoirs as a means of protecting the state's interest in those waters.

(3) Water for leasing under the water leasing program must be obtained from the following sources:

(a) any existing or future reservoir in a basin concerning which a temporary preliminary decree, a preliminary decree under 85-2-231, or a final decree under 85-2-234 has been entered;

(b) Fort Peck, Tiber, Canyon Ferry, Hungry Horse, Koocanusa, or Yellowtail reservoir if a contract between the department and the federal government concerning the acquisition of water is in effect; and

(c) any other existing or future federal reservoir:

(i) located in a basin concerning which a temporary preliminary decree, a preliminary decree under 85-2-231, or a final decree under 85-2-234 has been entered; and

(ii) for which and for so long as there is a contract between the department and the federal government concerning the acquisition of water.

(4) (a) Subject to subsections (4)(b) and (4)(c), the department may lease up to 1 million acre-feet of water from the reservoirs identified in subsection (3)(b) to water users for beneficial uses in Montana.

(b) The department may lease up to 50,000 acre-feet of water from the reservoirs identified in subsection (3)(b) to water users for beneficial uses outside Montana.

(c) The total amount of water leased under this subsection (4) may not exceed 1 million acre-feet.

(5) The term of any lease may not exceed 50 years. A term may be extended up to another 50 years if the department again determines the desirability of leasing by applying the considerations in subsection (7). In making a redetermination, the department may require the completion of an environmental impact statement in accordance with subsection (6).

(6) The department shall require the completion of an environmental impact statement under the provisions of Title 75, chapter 1, for lease applications that would result in the consumption of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more of water and for any other application for which an environmental impact statement is required by law. The department shall require the completion of an environmental impact statement whenever the cumulative effect of more than one application for a lease would constitute a probable significant environmental impact.

(7) Upon application by a person to lease water, the department shall make an initial determination of whether it is desirable for the department to lease water to the applicant. The determination of desirability must be made solely on the following considerations:

(a) the content of the environmental impact statement, if required;

(b) whether there is sufficient water available under the water leasing program; and

(c) whether the criteria, except as to legislative approval, set forth in 85-2-311 have been satisfied.

(8) The department shall for any lease agreement require commercially reasonable terms and conditions, which may include the requirement that up to 25% of the water to be leased be made available to a potential user for any beneficial use upon payment by the user of the costs of tapping into and removing water from the applicant's project. The department may differentiate in pricing, depending on the proposed beneficial use of the water.

(9) The lease of water or the use of water under a lease does not constitute a permit, as provided in 85-2-102, and does not establish a right to appropriate water within the meaning of Title 85, chapter 2, part 3.

(10) For purposes of the water leasing program established in this section, it is the intent of the legislature that the state act as a proprietor.

History: En. Sec. 13, Ch. 573, L. 1985; amd. Sec. 445, Ch. 418, L. 1995; amd. Sec. 1, Ch. 416, L. 2007.

Cross-References

Department powers over state waters, 85-1-204.

Department powers and duties, 85-2-113.

Restrictions on right to appropriate waters, 85-2-301.

Reserved water not subject to leasing program, 85-2-316.

85-2-142 through 85-2-144 reserved.

85-2-145. Removal of natural obstruction to exercise water right — consent or court ruling required. (1) A person who owns a water right but cannot exercise the right because a natural obstruction on another person's property prevents the flow of the water shall, in writing, seek consent from the landowner to remove the natural obstruction.

(2) The water right owner may remove the natural obstruction if the landowner consents in writing and the water right owner complies with applicable laws and regulations.

(3) If the landowner does not consent in writing to the removal of the natural obstruction, the water right owner may seek a declaration from district court that the removal of the natural obstruction would not harm the landowner and is necessary for the water right owner to exercise the water right.

(4) In seeking a district court declaration, the water right owner shall:

(a) agree to pay all costs of the removal;

(b) show that the utility of the landowner's property would not be lessened;

(c) show that the landowner would not incur additional, uncompensated burdens from the removal of the natural obstruction; and

(d) agree to comply with applicable laws and regulations.

(5) The landowner may present evidence showing that the removal is not necessary for the water right owner to exercise the right or that the provisions of subsection (4) could not be met if the removal is permitted.

(6) The court shall determine if the removal of the natural obstruction:

(a) is necessary for the water right owner to exercise the right; and

(b) would meet the provisions of subsection (4).

(7) If the court permits the removal, the court may require any conditions to ensure that the provisions of subsection (4) are met.

(8) The court may award court costs and attorney fees.

(9) Removal of a natural obstruction under this section does not impair any existing right of the landowner.

History: En. Sec. 1, Ch. 408, L. 2013.

85-2-146 through 85-2-149 reserved.

85-2-150. Chronically dewatered watercourse — identification. (1) Using the factors in subsection (2) as guidelines, the department, in consultation with other agencies and groups, shall identify chronically dewatered watercourses or portions of watercourses.

(2) The factors the department shall consider when identifying chronically dewatered watercourses or portions of watercourses include but are not limited to the:

(a) extent, duration, and frequency of the dewatering;

(b) impact of the dewatering on fish, wildlife, or other natural resources;

(c) particular species of fish and wildlife impacted;

(d) impact of dewatering on other off-stream uses, including but not limited to agricultural, industrial, municipal, and recreational uses;

(e) probable cause of the dewatering;

(f) existence of temporary or final decrees;

(g) history, if any, of conflict among water rights holders on the watercourse;

(h) practicality and reasonableness of installing measuring devices on diversions along the watercourse; and

(i) likelihood that the installation of measuring devices will significantly help to:

(i) solve the chronically dewatered condition of the watercourse; or

(ii) resolve conflicts among water rights holders on the watercourse.

History: En. Sec. 3, Ch. 543, L. 1991.

Cross-References

Department powers and duties, 85-2-113.

85-2-151 through 85-2-153 reserved.

85-2-154. Terminated. Sec. 7, Ch. 298, L. 2019.

History: En. Sec. 1, Ch. 298, L. 2019.

85-2-155. Terminated. Sec. 7, Ch. 298, L. 2019.

History: En. Sec. 2, Ch. 298, L. 2019.

85-2-156. Policy considerations. (1) Article IX, section 3(3), of the Montana constitution declares that all surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(2) The legal appropriation of water requires that the water be legally and physically available for appropriation.

(3) The measurement and monitoring of streamflow supports the state's ability to determine when water is physically and legally available to meet new demands while protecting existing water rights.

(4) The effective management and distribution of water depends on an accurate, real-time measurement of streamflow.

History: En. Sec. 1, Ch. 12, L. 2025.

Compiler's Comments

Effective Date: This section is effective October 1, 2025.

85-2-157. Intent. (1) The 2015 state water plan recognizes that improving Montana's water supply and distribution monitoring network improves the ability of water managers and water users to adjust to seasonal supply and demand imbalances as well as plan for longer-term imbalances associated with climate variability.

(2) It is the intent of the legislature to support local, state, and federal efforts and programs to collect and distribute timely and accurate information on Montana streamflows.

(3) The legislature recognizes that streamflow information is collected by numerous state and federal agencies and tribes to meet their statutory responsibilities.

(4) The legislature recognizes that streamflow information collected by state, tribal, and federal entities is critical to the administration of the Montana Water Use Act, distribution of water by decree, water supply planning for municipalities, and implementation of plans and agreements that address irrigation and agricultural uses and locally developed drought, fish habitat, or water supply objectives.

(5) The legislature recognizes it is in the public interest to support and encourage coordination in the collection and distribution of streamflow information.

History: En. Sec. 1, Ch. 62, L. 2025.

Compiler's Comments

Effective Date: This section is effective October 1, 2025.

Part 2

Adjudication of Water Rights

Part Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

85-2-201. Repealed. Sec. 37, Ch. 697, L. 1979.

History: En. Sec. 6, Ch. 452, L. 1973; R.C.M. 1947, 89-870.

85-2-202. Repealed. Sec. 37, Ch. 697, L. 1979.

History: En. Sec. 7, Ch. 452, L. 1973; R.C.M. 1947, 89-871.

85-2-203. Repealed. Sec. 37, Ch. 697, L. 1979.

History: En. Sec. 8, Ch. 452, L. 1973; amd. Sec. 1, Ch. 265, L. 1974; amd. Sec. 3, Ch. 485, L. 1975; R.C.M. 1947, 89-872.

85-2-204. Repealed. Sec. 37, Ch. 697, L. 1979.

History: En. Sec. 9, Ch. 452, L. 1973; amd. Sec. 4, Ch. 485, L. 1975; R.C.M. 1947, 89-873.

85-2-205. Repealed. Sec. 37, Ch. 697, L. 1979.

History: En. Sec. 10, Ch. 452, L. 1973; amd. Sec. 5, Ch. 485, L. 1975; R.C.M. 1947, 89-874.

85-2-206. Repealed. Sec. 37, Ch. 697, L. 1979.

History: En. Sec. 11, Ch. 452, L. 1973; amd. Sec. 6, Ch. 485, L. 1975; amd. Sec. 2, Ch. 416, L. 1977; R.C.M. 1947, 89-875.

85-2-207. Repealed. Sec. 37, Ch. 697, L. 1979.
History: En. Sec. 12, Ch. 452, L. 1973; amd. Sec. 7, Ch. 485, L. 1975; R.C.M. 1947, 89-876.

85-2-208. Repealed. Sec. 37, Ch. 697, L. 1979.
History: En. Sec. 13, Ch. 452, L. 1973; amd. Sec. 3, Ch. 416, L. 1977; R.C.M. 1947, 89-877.

85-2-209. Repealed. Sec. 37, Ch. 697, L. 1979.
History: En. Sec. 14, Ch. 452, L. 1973; R.C.M. 1947, 89-878.

85-2-210. Repealed. Sec. 37, Ch. 697, L. 1979.
History: En. Sec. 15, Ch. 452, L. 1973; R.C.M. 1947, 89-879.

85-2-211. Repealed. Sec. 315, Ch. 42, L. 1997.
History: En. Sec. 20, Ch. 697, L. 1979; amd. Sec. 2, Ch. 629, L. 1993.

85-2-212. Order by supreme court. (1) The Montana supreme court shall within 10 days of the filing of the petition by the attorney general issue an order to file a statement of a claim of an existing water right in substantially the following form:

"WATER RIGHTS ORDER

FAILURE TO FILE A CLAIM AS REQUIRED BY LAW WILL RESULT IN A CONCLUSIVE PRESUMPTION THAT THE WATER RIGHT OR CLAIMED WATER RIGHT HAS BEEN ABANDONED. (This introductory sentence shall be printed in not less than 12-point boldface type.) This order is notice of commencement of procedures for the general adjudication of existing rights to the use of water and of the requirement to file a claim for certain existing rights to the use of water. Every person, including but not limited to an individual, partnership, association, public or private corporation, city or other municipality, county, state agency or the state of Montana, and federal agency of the United States of America on its own behalf or as trustee for any Indian or Indian tribe, asserting a claim to an existing right to the use of water arising prior to July 1, 1973, is ordered to file a statement of claim to that right with the department no later than June 30, 1983. Claims for stock and individual as opposed to municipal domestic uses based upon instream flow or ground water sources are exempt from this requirement; however, claims for such uses may be voluntarily filed. Claims filed with the department in the Powder River basin in a declaration filed pursuant to the order of the department of natural resources and conservation or a district court issued pursuant to sections 8 and 9 of Chapter 452, Laws of 1973, or under sections 3 and 4 of Chapter 485, Laws of 1975, are also exempt.

For further information, contact the department of natural resources and conservation, Helena, Montana, for a copy of the law and an explanation of it."

(2) Upon petition of the attorney general, the Montana supreme court shall issue the order called for in subsection (1) with a shorter claim filing period of not less than 1 year, subject to extension not beyond June 30, 1983, by the Montana supreme court upon petition of the attorney general, in those basins or subbasins where state adjudication jurisdiction is being or is likely to be challenged.

History: En. Sec. 16, Ch. 697, L. 1979.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.
Indian and federal water rights, Title 85, ch. 2, part 7.

85-2-213. Notice of order. To ensure that all persons who may claim an existing water right are notified of the requirement to file a claim of that right, the Montana supreme court shall give notice of the order as follows:

(1) It shall cause the order, printed in not less than 10-point type, to be placed in a prominent and conspicuous place in all daily newspapers of the state and in at least one newspaper published in each county of the state within 30 days after the Montana supreme court order as provided in 85-2-212.

(2) It shall cause the order, in writing, to be placed in a prominent and conspicuous location in each county courthouse in the state within 30 days after the Montana supreme court order as provided in 85-2-212.

(3) It shall provide copies of the order, in writing, to the press services with offices located in Helena within 30 days after the Montana supreme court order as provided in 85-2-212.

(4) It shall, under authority granted to the states by 43 U.S.C. 666, provide for service of the petition and order upon the United States attorney general or the attorney general's designated representative.

(5) It may also in its discretion give notice of the order in any other manner that will carry out the purposes of this section.

(6) It may also in its discretion order that the department or the water judge assist the Montana supreme court in carrying out this section.

History: En. Sec. 17, Ch. 697, L. 1979; amd. Sec. 3, Ch. 629, L. 1993; amd. Sec. 27, Ch. 389, L. 1999.

Cross-References

Due process of law guaranteed, Art. II, sec. 17, Mont. Const.
Water Judges, Title 3, ch. 7, part 2.
Property taxes — Treasurer to publish notice — manner of publication, 15-16-101.
Publication of legal notices, Title 18, ch. 7, part 2.

85-2-214. Commencement of action. (1) The action for the adjudication of all existing water rights under Title 3, chapter 7, Title 85, chapter 2, part 7, and this part is commenced with the issuing of the order by the Montana supreme court to file a statement of a claim of an existing water right as provided in 85-2-212. For each claim, the action is considered filed in the judicial district of the county in which the diversion is made or, if there is a claimed right with no diversion, in the judicial district of the county in which the use occurs.

(2) The water judge shall monitor the claim filing procedure for claims within the judge's water division and make orders necessary to ensure timely and accurate compliance with the claim filing procedure.

History: En. Secs. 6, 20, Ch. 697, L. 1979; amd. Sec. 2757, Ch. 56, L. 2009.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.
Water Judges, Title 3, ch. 7, part 2.

85-2-215. Consolidation of matters. The water judge may consolidate all matters concerning the determination and interpretation of existing water rights within the water judge's division in any combination or groups of claims or matters for joint hearings or proceedings conducted by the water judge or water master in any location within the division. The water judge may make such consolidations as are necessary to administer the requirements of this part and part 7 in adjudicating claims of existing water rights.

History: En. Sec. 6, Ch. 697, L. 1979.

Cross-References

Water Courts, Title 3, ch. 7.

85-2-216. Venue for water rights determinations. All matters concerning the determination and interpretation of existing water rights shall be brought before or immediately transferred to the water judge in the proper water division unless witnesses have been sworn and testimony has been taken by a district court prior to the date of the Montana supreme court order as provided in 85-2-212.

History: En. Sec. 6, Ch. 697, L. 1979.

Cross-References

Water divisions, Title 3, ch. 7, part 1.
Water Courts — jurisdiction, Title 3, ch. 7, part 5.
Proper place of trial — venue, Title 25, ch. 2.

85-2-217. Suspension of adjudication. While negotiations for the conclusion of a compact under part 7 are being pursued, all proceedings to generally adjudicate reserved Indian water rights and federal reserved water rights of those tribes and federal agencies that are negotiating are suspended. The obligation to file water rights claims for those federal non-Indian and Indian reserved rights is also suspended. This suspension is effective until July 1, 2013, as long as negotiations are continuing or ratification of a completed compact is being sought. If approval by the state legislature and tribes or federal agencies has not been accomplished by July 1, 2013, the suspension must terminate on that date. Upon termination of the suspension of this part, the tribes and the federal agencies are subject to the special filing requirements of 85-2-702(3) and all other requirements of the state water adjudication system provided for in Title 85, chapter 2. Those tribes and federal agencies that choose not to negotiate their federal non-Indian and

Indian reserved water rights are subject to the full operation of the state adjudication system and may not benefit from the suspension provisions of this section.

History: En. Sec. 27, Ch. 697, L. 1979; amd. Sec. 4, Ch. 268, L. 1981; amd. Sec. 1, Ch. 667, L. 1985; amd. Sec. 1, Ch. 358, L. 1987; amd. Sec. 2, Ch. 784, L. 1991; amd. Sec. 1, Ch. 44, L. 1997; amd. Sec. 3, Ch. 497, L. 1997; amd. Sec. 1, Ch. 103, L. 2003; amd. Sec. 1, Ch. 5, L. 2009.

Cross-References

Jurisdiction on Indian lands, Title 2, ch. 1, part 3.

Reserved Water Rights Compact Commission, 2-15-212.

85-2-218. Process and criteria for designating priority basins or subbasins. (1) The water judges and the department, in performing their functions in the adjudication process, shall give priority to basins or subbasins designated each biennium by the legislature. Basins or subbasins must be designated according to the following criteria:

(a) recurring water shortages within the basin or subbasin have resulted in urgent water rights controversies that require adjudication to determine relative rights;

(b) federal or Indian reserved rights are nearing determination, either by compact or adjudication, thus making adjudication of other rights in the basin or subbasin important for timely issuance of preliminary or final decrees;

(c) the basin or subbasin's location would help ensure efficient use of department and water court resources; and

(d) the adjudication process in the basin or subbasin is nearing the issuance of a decree.

(2) The water judge may designate a basin for priority adjudication upon petition of 100 or more persons who have filed claims within the basin or may designate a subbasin for priority adjudication upon petition of a majority of persons who have filed claims within the subbasin. However, the basin or subbasin may receive priority only if it meets one or more of the criteria in subsection (1).

(3) If adjudication work in one or more of the priority basins or subbasins has been completed or has been suspended for good cause, the water judge may select other basins or subbasins for priority adjudication based on the criteria in subsection (1).

History: En. Sec. 10, Ch. 651, L. 1987; amd. Sec. 2758, Ch. 56, L. 2009.

85-2-219 and 85-2-220 reserved.

85-2-221. Filing of claim of existing water right — filing late claim. (1) A person claiming an existing right, unless provided for under 85-2-222 or unless an earlier filing date is ordered as provided in 85-2-212, shall file with the department no later than June 30, 1983, a statement of claim for each water right asserted on a form provided by the department.

(2) The department shall file a copy of each statement of claim with the clerk of the district court for the judicial district in which the diversion is made or, if there is a claimed right with no diversion, the department shall file a copy of the statement of claim with the clerk of the district court of the judicial district in which the use occurs.

(3) Subject to certain terms and conditions, the legislature intends to provide for the remission of the forfeiture of existing rights to the use of water caused by the failure to comply with subsection (1). Accordingly, with respect only to a basin that has not been closed to further appropriation pursuant to a compact ratified by the legislature under part 7 of this chapter prior to July 1, 1993, a claim of an existing water right not filed with the department on or before April 30, 1982, may be filed with the department on or before July 1, 1996, on forms provided by the department. This section is not intended to prevent the filing of a late claim in addition to a claim of an existing water right filed on or before April 30, 1982, if and to the extent that the additional right claimed is not the same as the right that was the subject of a previous claim and is not an abandoned right. Claims must be physically submitted to the department or sent by United States mail, postmarked on or before the deadline set forth in this subsection, in order to be considered timely. The claims are then subject to adjudication by the district courts as any other claim of existing right. The claimant is then subject to all rights and obligations of any other party, except that:

(a) a late claim must be incorporated into the adjudication, subject to all proceedings that have taken place prior to the date of filing;

(b) the person filing a late claim may request that a decree previously entered be reopened or may object to matters previously determined on the merits by the water court only to the extent that the request or objection is otherwise authorized by law and is based on a claim of water right filed on or before April 30, 1982;

(c) a person filing a late claim does not have the right or standing to object to any water rights compact reached in accordance with part 7 of this chapter that is ratified by the legislature prior to July 1, 1993, except to the extent that right or standing to object exists based on a claim of water right filed on or before April 30, 1982, or to claim protection for the right represented in the late claim under any provision of such a compact that subordinates the use of a water right recognized in the compact to a right recognized under state law;

(d) if the water judge, following objection under 85-2-233, finds that the right represented in the late claim was the subject of a prior order or decree by the water judge or is otherwise without merit, the water judge shall award costs and reasonable attorney fees to the person or persons filing the objection;

(e) a right represented in a late claim is subordinate to all federal and Indian reserved water rights established by compact or decree under this chapter;

(f) unless a late claim either was placed in the United States mail and postmarked on or before April 30, 1982, or, if there is no evidence of the date of mailing, there is evidence of execution on or before April 30, 1982, and actual receipt by the department on or before May 7, 1982, the right represented in the claim is, in addition, subordinate to:

(i) rights represented in all valid, timely filed claims; and

(ii) rights represented in a permit or reservation of water issued under this chapter if and to the extent that the person holding the permit or reservation files an objection under this part and proves that the person holding the permit or reservation reasonably relied to the detriment of the person holding the permit or reservation upon the failure of the claimant to file a claim on or before April 30, 1982.

(4) The department and the district courts may not accept any statements of claim physically submitted or postmarked after July 1, 1996, and shall notify a person who files a claim after July 1, 1996, that the claim will not be accepted.

History: En. Sec. 11, Ch. 697, L. 1979; amd. Sec. 4, Ch. 629, L. 1993; amd. Sec. 2, Ch. 338, L. 2017.

Cross-References

Existing water rights, Art. IX, sec. 3, Mont. Const.
General duties of Clerk of District Court, 3-5-501.
Department duties, 85-2-112.

85-2-222. Definition — filing process — notice. (1) As used in this section, "exempt right" means those claims for existing rights for livestock and individual uses as opposed to municipal domestic uses based upon instream flow or ground water sources and claims for rights in the Powder River basin included in a declaration filed pursuant to the order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, or under sections 3 and 4 of Chapter 485, Laws of 1975. An exempt right is exempt from the filing requirements of 85-2-221(1).

(2) A person claiming an exempt right:

(a) may file with the department no later than June 30, 2019, a statement of claim for each water right asserted;

(b) shall submit information required by 85-2-224(1) and (2) on a form provided by the department; and

(c) shall pay the fees pursuant to 85-2-225.

(3) A claim of an exempt right constitutes prima facie proof of its content.

(4) The provisions of 85-2-233, 85-2-243, and 85-2-248, as well as supreme court examination rules, apply to any statement of claim of an exempt right filed under this section.

(5) Failure to file a claim for an exempt right under this section:

(a) does not result in the forfeiture of an existing water right; and

(b) subordinates the existing right to all other water rights except those exempt rights for which a claim has not been filed.

(6) Notice of the filing deadline provided in subsection (2) must be published by the department once a week for 2 consecutive weeks in a daily newspaper of general county circulation. The notice must be clearly posted in each county courthouse. The department shall

send to the last-known address of each unique property owner a written notice of the filing deadline and a claim form at least once by July 1, 2017.

(7) The department may not accept any statements of claim submitted or postmarked after June 30, 2019. The department shall notify a person who files a claim after June 30, 2019, that the person's claim will not be accepted.

(8) All fees collected under this section must be deposited in the account established under 85-2-280.

History: En. Sec. 11, Ch. 697, L. 1979; amd. Sec. 1, Ch. 323, L. 2013; amd. Sec. 3, Ch. 338, L. 2017.

85-2-223. Public recreational uses. The department of fish, wildlife, and parks shall exclusively represent the public for purposes of establishing any prior and existing public recreational use in existing right determinations under this part, provided that the foregoing shall not exclude a federal governmental entity from representing the public for the purpose of establishing any prior and existing public recreational use in existing right determinations under this part. The foregoing shall not be construed in any manner as a legislative determination of whether or not a recreational use sought to be established prior to July 1, 1973, is or was a beneficial use.

History: En. Sec. 12, Ch. 697, L. 1979.

Cross-References

Recreation, Title 23, ch. 2.
Beneficial use defined, 85-2-102.
Department of Fish, Wildlife, and Parks — powers and duties, 87-1-201.

85-2-224. Statement of claim. (1) The statement of claim for each right arising under the laws of the state and for each right reserved under the laws of the United States that has been actually put to use must include substantially the following:

(a) the name and mailing address of the claimant;

(b) the name of the watercourse or water source from which the right to divert or make use of water is claimed, if available;

(c) the quantities of water and times of use claimed;

(d) the legal description, with reasonable certainty, of the point or points of diversion and places of use of waters;

(e) the purpose of use, including, if for irrigation, the number of acres irrigated;

(f) the approximate dates of first putting water to beneficial use for the various amounts and times claimed in subsection (1)(c); and

(g) the sworn statement that the claim set forth is true and correct to the best of claimant's knowledge and belief.

(2) A claimant filing a statement of claim under subsection (1) shall submit maps, plats, aerial photographs, decrees, pertinent portions of those documents, or other evidence in support of the claim. All maps, plats, or aerial photographs should show as nearly as possible to scale the point of diversion, place of use, place of storage, and other pertinent conveyance facilities.

(3) Any statement of claim for rights reserved under the laws of the United States that have not yet been put to use must include substantially the following:

(a) the name and mailing address of the claimant;

(b) the name of the watercourse or water source from which the right to divert or make use of water is claimed, if available;

(c) the quantities of water claimed;

(d) the priority date claimed;

(e) the laws of the United States on which the claim is based; and

(f) the sworn statement that the claim set forth is true and correct to the best of the claimant's knowledge and belief.

History: En. Sec. 13, Ch. 697, L. 1979; amd. Sec. 2, Ch. 667, L. 1985; amd. Sec. 2759, Ch. 56, L. 2009.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.
Beneficial use defined, 85-2-102.
Measurement of water, 85-2-103.
Department duties, 85-2-112.
Irrigation districts, Title 85, ch. 7.

85-2-225. Filing fee — processing fee for remitted claims. (1) Each claim filed under 85-2-221 must be accompanied by a filing fee in the amount of $40, subject to the following exceptions:

(a) the total filing fees for all claims filed by one person in any one water court division may not exceed $480; and

(b) a filing fee is not required to accompany a claim of an existing right that is included in a decree of a court in the state of Montana and that is accompanied by a copy of that decree or pertinent portion of the decree.

(2) A claim that is exempt from the filing requirements of 85-2-221(1) but that is voluntarily filed must be accompanied by a filing fee in the amount of $40. Exempt claims for a single development with several uses if filed simultaneously may be accompanied by a filing fee in the amount of $40.

(3) (a) In addition to the filing fee set forth in subsection (1), each statement of claim filed under 85-2-221(3) must be accompanied by a processing fee in the amount of $150, which must be deposited in the general fund.

(b) The water judge shall assess against the late claimant all reasonable administrative costs and expenses that may be incurred by the court due to the filing of the late claim and the consideration of the objection, and the assessment must be deposited in the general fund.

(4) Each claim filed under 85-2-222 must be accompanied by a filing fee in the amount of $130, except that:

(a) the total filing fees for all claims under 85-2-222 filed by one person in any one water court division may not exceed $1,560; and

(b) a filing fee is not required to accompany a claim of an existing right that is included in a decree of a court in the state of Montana and that is accompanied by a copy of that decree or pertinent portion of the decree.

History: En. Sec. 18, Ch. 697, L. 1979; amd. Sec. 1, Ch. 253, L. 1981; amd. Sec. 5, Ch. 268, L. 1981; amd. Sec. 5, Ch. 629, L. 1993; amd. Sec. 28, Ch. 389, L. 1999; amd. Sec. 70, Ch. 44, L. 2007; amd. Sec. 4, Ch. 338, L. 2017.

Cross-References

Department powers and duties, 85-2-113.

85-2-226. Abandonment by failure to file claim. The failure to file a claim of an existing right as required by 85-2-221(1) establishes a conclusive presumption of abandonment of that right.

History: En. Sec. 14, Ch. 697, L. 1979; amd. Sec. 6, Ch. 629, L. 1993.

Cross-References

Existing rights preserved, Art. IX, sec. 3, Mont. Const.

Complete list of conclusive presumptions, 26-1-601.

85-2-227. Claim to constitute prima facie evidence — relevant evidence — abandonment — criteria for presumption of municipal nonabandonment. (1) For purposes of adjudicating rights pursuant to this part, a claim of an existing right filed in accordance with 85-2-221 or an amended claim of existing right constitutes prima facie proof of its content until the issuance of a final decree. For purposes of administering water rights, the provisions of a temporary preliminary decree or a preliminary decree, as modified after objections and hearings, supersede a claim of existing right until a final decree is issued.

(2) A water judge may consider all relevant evidence in the determination and interpretation of existing water rights. Relevant evidence under this part may include admissible evidence arising before or after July 1, 1973.

(3) Subject to the provisions of subsection (4), a water judge may determine all or part of an existing water right to be abandoned based on a consideration of all admissible evidence that is relevant, including, without limitation, evidence relating to acts or intent occurring in whole or in part after July 1, 1973.

(4) In a determination of abandonment made under subsection (3), the legislature finds that a water right that is claimed for municipal use by a city, town, or other public or private entity that operates a public water supply system, as defined in 75-6-102, is presumed to not be abandoned if the city, town, or other private or public entity has used any part of the water right or municipal water supply and there is admissible evidence that the city, town, or other public or private entity also has:

(a) obtained a filtration waiver under the federal Safe Drinking Water Act, 42 U.S.C. 300(f), et seq.;

(b) acquired, constructed, or regularly maintained diversion or conveyance structures for the future municipal use of the water right;

(c) conducted a formal study, prepared by a registered professional engineer or qualified consulting firm, that includes a specific assessment that using the water right for municipal supply is feasible and that the amount of the water right is reasonable for foreseeable future needs; or

(d) maintained facilities connected to the municipal water supply system to apply the water right to:

(i) an emergency municipal water supply;

(ii) a supplemental municipal water supply; or

(iii) any other use approved by the department under Title 85, chapter 2, part 4.

History: En. Sec. 15, Ch. 697, L. 1979; amd. Sec. 5, Ch. 604, L. 1989; amd. Sec. 2, Ch. 174, L. 1997; amd. Sec. 1, Ch. 213, L. 1999; amd. Sec. 1, Ch. 17, L. 2005.

Cross-References

Evidence, Title 26.

85-2-228. Federal reserved water rights with priority date of July 1, 1973, or later — process and adjudication — purpose. (1) The purpose of this section is to ensure that a federal reserved water right with a priority date of July 1, 1973, or later is subject to the same process and adjudication as a federal reserved water right with a priority date before July 1, 1973.

(2) Under authority granted to the states by 43 U.S.C. 666, a federal reserved water right that has a priority date of July 1, 1973, or later and that is asserted by a federal agency is subject to the claim filing requirements and all other applicable requirements of the state water adjudication system provided for in Title 85, chapter 2, parts 2 and 7.

(3) At the request of a federal agency, the reserved water rights compact commission may negotiate to conclude a compact under Title 85, chapter 2, part 7, for a federal reserved water right with a priority date of July 1, 1973, or later.

(4) Whenever necessary, a water judge may reopen any decree issued pursuant to Title 85, chapter 2, to process the asserted or negotiated federal reserved water right.

History: (1)En. Sec. 1, Ch. 343, L. 1991; (2) through (4)En. Sec. 2, Ch. 343, L. 1991; amd. Sec. 4, Ch. 497, L. 1997.

Cross-References

Indian and federal water rights, Title 85, ch. 2, part 7.

85-2-229 and 85-2-230 reserved.

85-2-231. Temporary preliminary decree, preliminary decree, and supplemental preliminary decree. (1) A water judge may issue a temporary preliminary decree prior to the issuance of a preliminary decree if the temporary preliminary decree is necessary for the orderly adjudication or administration of water rights.

(2) (a) The water judge shall issue a preliminary decree. The preliminary decree must be based on:

(i) the statements of claim before the water judge, including all claims filed pursuant to 85-2-222 for a preliminary decree issued after June 30, 2019;

(ii) the data submitted by the department;

(iii) the contents of compacts approved by the Montana legislature and the tribe or federal agency or, lacking an approved compact, the filings for federal and Indian reserved rights; and

(iv) any additional data obtained by the water judge.

(b) The preliminary decree must be issued within 90 days after the close of the special filing period set out in 85-2-702(3) or as soon after the close of that period as is reasonably feasible.

(c) In a basin in which a water judge has issued a preliminary decree prior to July 1, 2019, the water judge shall issue a supplemental preliminary decree that includes but is not limited to claims for exempt rights, as defined in 85-2-222, that were not included in a preliminary decree and for which notice has not been provided under 85-2-233(6).

(d) The water judge may issue an interlocutory decree if an interlocutory decree is otherwise necessary for the orderly administration of water rights.

(3) A temporary preliminary decree may be issued for any hydrologically interrelated portion of a water division, including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of supply of water, or any claim or group of claims at a time different from the issuance of other temporary preliminary decrees.

(4) The temporary preliminary decree, preliminary decree, or supplemental preliminary decree must contain the information and make the determinations, findings, and conclusions required for the final decree under 85-2-234.

(5) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree and is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not satisfied, the water judge may recommit the report to the master with instructions or modify the report and issue the preliminary decree.

(6) The department shall examine claims in basins that were verified rather than examined as ordered by the water court. The objection and hearing provisions of Title 85, chapter 2, part 2, apply to these claims. *(Subsection (6) terminates June 30, 2028—sec. 10, Ch. 269, L. 2015.)*

History: En. Secs. 22, 27, Ch. 697, L. 1979; amd. Sec. 6, Ch. 268, L. 1981; amd. Sec. 1, Ch. 394, L. 1985; amd. Sec. 3, Ch. 667, L. 1985; amd. Sec. 1, Ch. 605, L. 1989; amd. Sec. 3, Ch. 174, L. 1997; amd. Sec. 12, Ch. 288, L. 2005; amd. Sec. 2, Ch. 269, L. 2015; amd. Sec. 5, Ch. 338, L. 2017; amd. Sec. 1, Ch. 211, L. 2019; amd. Sec. 1, Ch. 154, L. 2021.

Cross-References

Water Judges, Title 3, ch. 7, part 2.
Duties of water masters, 3-7-311.
Definition — filing process — notice, 85-2-222.
Reserved Water Rights Compact Commission, Title 85, ch. 2, part 7.

85-2-232. Availability of temporary preliminary decree, preliminary decree, or supplemental preliminary decree. (1) (a) The water judge shall send to the department a copy of a temporary preliminary decree, preliminary decree, or supplemental preliminary decree issued for a basin.

(b) The water judge shall serve by mail a notice of availability of the temporary preliminary decree, preliminary decree, or supplemental preliminary decree to each person who has filed a claim of existing right within the decreed basin or to that person's successor as documented in the department's records.

(c) The water judge shall also serve by mail a notice of availability of the temporary preliminary decree, preliminary decree, or supplemental preliminary decree to the purchaser under contract for deed, as defined in 70-20-115, of property in connection with which a claim of existing right has been filed within the decreed basin.

(d) In the Powder River basin, the water judge shall serve by mail a notice of availability of the temporary preliminary decree, preliminary decree, or supplemental preliminary decree to each person or to that person's successor as documented in the department's records, who has filed a declaration of an existing right.

(e) The water judge shall enclose with a notice required under subsections (1)(b) through (1)(d) an abstract of the disposition of the claimed or declared existing right of a person identified in this section or that person's successor as documented in the department's records.

(f) The notice of availability required under this section must also be served upon:

(i) those issued or having applied for and not having been denied a permit to beneficially use water within the decreed basin pursuant to Title 85, chapter 2, part 3;

(ii) those granted a reservation within the decreed basin pursuant to 85-2-316; or

(iii) other interested persons who request service of the notice from the water judge.

(g) When the water court provides notice to claimants of the opportunity to object, it shall include information explaining the right to appeal a water court decision as provided in 85-2-235.

(2) The clerk or person designated by the water judge to mail the notice shall make a general certificate of mailing certifying that a copy of the notice has been placed in the United States mail, postage prepaid, addressed to each party required to be served notice of the

temporary preliminary decree or preliminary decree. The certificate is conclusive evidence of legal notice of entry of decree.

(3) Notice of the availability of a preliminary decree or a supplemental preliminary decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation that cover the water division or divisions in which the decreed basin is located. This notice must be provided before the final decree for the basin is issued.

(4) A person may obtain a copy of the temporary preliminary decree, preliminary decree, or supplemental preliminary decree upon payment of a fee of $20 or the cost of printing, whichever is greater, to the water judge. The fee must be deposited in the state general fund.

History: **En. Sec. 22, Ch. 697, L. 1979; amd. Sec. 28, Ch. 526, L. 1983; amd. Sec. 2, Ch. 605, L. 1989; amd. Sec. 1, Ch. 197, L. 1995; amd. Sec. 29, Ch. 389, L. 1999; amd. Sec. 5, Ch. 526, L. 2005; amd. Sec. 6, Ch. 338, L. 2017.**

Cross-References

Duties of water masters, 3-7-311.

Department duties, 85-2-112.

85-2-233. Hearing on decrees or petition — procedure. (1) (a) For good cause shown and subject to the provisions of subsection (9), a hearing must be held before the water judge on any objection to a temporary preliminary decree, a preliminary decree, or a supplemental preliminary decree by:

(i) the department;

(ii) a person named in the temporary preliminary decree, preliminary decree, or supplemental preliminary decree;

(iii) any person within the basin entitled to receive notice under 85-2-232(1); or

(iv) any other person who claims rights to the use of water from sources in other basins that are hydrologically connected to the sources within the decreed basin and who would be entitled to receive notice under 85-2-232 if the claim or claims were from sources within the decreed basin.

(b) For the purposes of this subsection (1), "good cause shown" means a written statement showing that a person has an ownership, leasehold, economic, or clearly demonstrated particularized interest in an existing water right, permit, certificate, state water reservation under 85-2-316, or right to receive water through an irrigation project and that the person's interest has been affected by the decree.

(c) A person does not waive the right to object to a preliminary decree by failing to object to a temporary preliminary decree issued before March 28, 1997. However, a person may not raise an objection to a matter in a preliminary decree if that person was a party to the matter when the matter was previously litigated and resolved as the result of an objection raised in a temporary preliminary decree unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the judgment is void; or

(v) any other reason justifying relief from the operation of the judgment.

(d) After March 28, 1997, a person may not raise an objection or counterobjection to a matter contained in a subsequent decree issued under this part if the matter was contained in a prior decree issued under this part for which there was an objection and counterobjection period unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered at the close of the objection period set forth in subsection (2);

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the temporary preliminary decree is void; or

(v) any other reason justifying relief from the operation of the prior decree issued under this part. The fact that a prior owner of a water right did not object or counterobject at a prior decree stage may not be a basis for a subsequent owner of the water right to object or counterobject absent a finding that one of the provisions in this subsection (1)(d) applies.

(2) Objections must be filed with the water judge within 180 days after entry of the temporary preliminary decree, preliminary decree, or supplemental preliminary decree. The water judge may, for good cause shown, extend this time limit up to two additional 90-day periods if application for an extension is made prior to expiration of the original 180-day period or any extension of it.

(3) Upon expiration of the time for filing objections under subsection (2), the water judge shall notify each party whose claim received an objection that an objection was filed. The notice must set forth the name of each objector and must allow an additional 60 days for the party whose claim received an objection to file a counterobjection to the claim or claims of the objector. Counterobjections must be limited to those claims that are included within the particular decree issued by the court.

(4) Objections and counterobjections must specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request must state the specific grounds and evidence on which the objections are based.

(5) (a) Upon expiration of the time for filing counterobjections under subsection (3), the water judge shall notify each party named in the temporary preliminary decree, preliminary decree, or supplemental preliminary decree or that person's successor as documented in the department records and shall notify the attorney general that objections and counterobjections have been filed. The water judge shall fix a day when all parties who wish to participate in future proceedings are required to appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing must be conducted in the same manner as for other civil actions. At the order of the water judge, a hearing may be conducted by the water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(b) In conducting hearings pursuant to this chapter, a water judge may require the parties to participate in settlement conferences or may assign the matter to a mediator. Any settlement reached by the parties is subject to review and approval by a water judge.

(6) (a) After the issuance of a temporary preliminary decree or preliminary decree, notice must be published once a week for 3 consecutive weeks in two newspapers of general circulation in the basin where the decree was issued for:

(i) a motion to amend a statement of claim that may adversely affect other water rights; or

(ii) a motion to amend a timely objection that may adversely affect other water rights.

(b) The notice must specify that any response or objection to the proposed amendment must be filed within 45 days of the date of the last notice.

(c) The water judge may order any additional notice of the motion as the water judge considers necessary.

(d) The costs of the notice required pursuant to this subsection must be borne by the moving party.

(7) Failure to object under subsection (1) to a compact negotiated and ratified under 85-2-702 or 85-2-703 bars any subsequent cause of action in the water court.

(8) If the court sustains an objection to a compact, it may declare the compact void. The agency of the United States, the tribe, or the United States on behalf of the tribe party to the compact is permitted 6 months after the court's determination to file a statement of claim, as provided in 85-2-224, and the court shall issue a new preliminary decree in accordance with 85-2-231. However, any party to a compact declared void may appeal from that determination in accordance with those procedures applicable to 85-2-235, and the filing of a notice of appeal stays the period for filing a statement of claim as required under this subsection.

(9) Upon petition by a claimant, the water court may grant a motion for dismissal to an objection to a temporary preliminary or preliminary decree if the objection pertains to an element of a water right that was previously decreed and if dismissal is consistent with common-law principles of issue and claim preclusion.

(10) The provisions of subsection (9) do not apply to issues arising after entry of the previous decree, including but not limited to the issues of abandonment, expansion of the water right, and reasonable diligence.

(11) All issue remarks, as defined in 85-2-250, must be finally resolved before the issuance of a final decree.

History: En. Sec. 23, Ch. 697, L. 1979; amd. Sec. 7, Ch. 268, L. 1981; amd. Sec. 4, Ch. 667, L. 1985; amd. Sec. 3, Ch. 605, L. 1989; amd. Sec. 2, Ch. 421, L. 1995; amd. Sec. 4, Ch. 174, L. 1997; amd. Sec. 6, Ch. 526, L. 2005; amd. Sec. 2, Ch. 323, L. 2013; amd. Sec. 1, Ch. 283, L. 2015; amd. Sec. 7, Ch. 338, L. 2017.

Cross-References

Due process, Art. II, sec. 17, Mont. Const.
Duties of water masters, 3-7-311.
Administrative proceedings, 85-2-121.

85-2-234. Final decree. (1) The water judge shall, on the basis of the preliminary decree and any supplemental preliminary decree, on the basis of any hearing that may have been held, and on final resolution of all issue remarks, as defined in 85-2-250, enter a final decree affirming or modifying the preliminary decree.

(2) The terms of a compact negotiated and ratified under 85-2-702 must be included in the final decree without alteration unless an objection is sustained pursuant to 85-2-233. However, the court may not alter or amend any of the terms of a compact except with the prior written consent of the parties in accordance with applicable law.

(3) The final decree must establish the existing rights and priorities within the water judge's jurisdiction of persons who have filed a claim in accordance with 85-2-221 and 85-2-222, of persons required to file a declaration of existing rights in the Powder River basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, and of any federal agency or Indian tribe possessing water rights arising under federal law, required by 85-2-702 to file claims.

(4) The final decree must establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all water rights and their relative priorities.

(5) The final decree must state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person, federal agency, and Indian tribe named in the decree are based.

(6) For each person who is found to have an existing right arising under the laws of the state of Montana, the final decree must state:

(a) the name and post-office address of the owner of the right;

(b) the amount of water included in the right, as follows:

(i) by flow rate for direct flow rights, such as irrigation rights;

(ii) by volume for rights, such as stockpond and reservoir storage rights, and for rights that are not susceptible to measurement by flow rate; or

(iii) by flow rate and volume for rights that a water judge determines require both volume and flow rate to adequately administer the right;

(c) the date of priority of the right;

(d) the purpose for which the water included in the right is used;

(e) the place of use and a description of the land, if any, to which the right is appurtenant;

(f) the source of the water included in the right;

(g) the place and means of diversion;

(h) the inclusive dates during which the water is used each year;

(i) any other information necessary to fully define the nature and extent of the right.

(7) For each person, tribe, or federal agency possessing water rights arising under the laws of the United States, the final decree must state:

(a) the name and mailing address of the holder of the right;

(b) the source or sources of water included in the right;

(c) the quantity of water included in the right;

(d) the date of priority of the right;

(e) the purpose for which the water included in the right is currently used, if at all;

(f) the place of use and a description of the land, if any, to which the right is appurtenant;

(g) the place and means of diversion, if any; and

(h) any other information necessary to fully define the nature and extent of the right, including the terms of any compacts negotiated and ratified under 85-2-702.

(8) Clerical mistakes in a final decree may be corrected at any time on the initiative of the water judge or on the petition of any person who possesses a water right. The water judge

shall order the notice of a correction proceeding that the judge determines to be appropriate to advise all persons who may be affected by the correction. An order of the water judge making or denying a clerical correction is subject to appellate review.

History: En. Sec. 24, Ch. 697, L. 1979; amd. Sec. 5, Ch. 667, L. 1985; amd. Sec. 1, Ch. 438, L. 1987; amd. Sec. 1, Ch. 426, L. 1989; amd. Sec. 7, Ch. 629, L. 1993; amd. Sec. 7, Ch. 526, L. 2005; amd. Sec. 2760, Ch. 56, L. 2009; amd. Sec. 3, Ch. 323, L. 2013; amd. Sec. 8, Ch. 338, L. 2017.

Cross-References

Enforcement of final decree, 3-7-212.
Water Courts — jurisdiction, Title 3, ch. 7, part 5.

85-2-235. Appeals. (1) A person whose existing rights and priorities are determined in a final decree may appeal the determination only if:

(a) the person requested a hearing and appeared and entered objections to the temporary preliminary decree or the preliminary decree;

(b) the person's rights or priorities as determined in the temporary preliminary decree or the preliminary decree were affected as the result of an objection filed by another person;

(c) the person requested a hearing and appeared before the water court to finally resolve an issue remark, as defined in 85-2-250; or

(d) the person is a claimant appealing an adverse decision when the water court issued the decision as the result of an evidentiary hearing or as the result of calling the claim in on the court's own motion.

(2) The attorney general may appeal a determination made in a final decree if the attorney general participated as an intervenor as provided in 85-2-248.

(3) An interlocutory ruling by the water judge upon a question of law may be appealed by any party who is affected by the decision and who participated in the matter in which the ruling was issued.

History: En. Sec. 25, Ch. 697, L. 1979; amd. Sec. 4, Ch. 605, L. 1989; amd. Sec. 3, Ch. 421, L. 1995; amd. Sec. 8, Ch. 526, L. 2005.

Cross-References

Enforcement of final decree, 3-7-212.

85-2-236. Certificate of water right. When a final decree is entered, the water judge shall send a copy to the department. Except as provided in 85-2-306, the department shall on the basis of the final decree issue a certificate of water right to each person decreed an existing right. The original of the certificate shall be sent to the person to whom the right is decreed. The department shall keep a copy of the certificate in its office in Helena.

History: En. Sec. 26, Ch. 697, L. 1979; amd. Sec. 5, Ch. 448, L. 1983; amd. Sec. 1, Ch. 535, L. 1987; amd. Sec. 3, Ch. 805, L. 1991.

Cross-References

Role and duties of County Clerk and Election Administrator, 7-4-2611.
Procedure to record documents, 7-4-2617.
Department duties, 85-2-112.
Certificate of water rights — permit process, 85-2-315.

85-2-237. *(Temporary)* **Reopening and review of decrees.** (1) After July 1, 1996, the water judges shall by order reopen and review, within the limits set forth by the procedures described in this section, all preliminary or final decrees:

(a) that have been issued but have not been noticed throughout the water divisions;

(b) for basins for which claims have been filed under 85-2-221(3); or

(c) for basins that were verified and not examined for which the water court has received a petition and has determined that examination is necessary as provided in 85-2-282 or the water court has issued an order for reexamination on its own initiative.

(2) (a) Each order must state that the water judge will reopen the decree or decrees and, upon a hearing, review the water court's determination of any claim in the decree or decrees if an objection to the claim has been filed for the purpose of protecting rights to the use of water from sources:

(i) within the basin for which the decree was entered; or

(ii) in other basins that are hydrologically connected to sources within the basin for which the decree was entered.

(b) A person may not raise an objection to a matter in a reopened decree if the person was a party to the matter when the matter was previously litigated and resolved as the result of the previous objection process, unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the judgment is void;

(v) any other reason justifying relief from the operation of the judgment.

(c) The objection must be made in accordance with the procedure for filing objections under 85-2-233.

(3) The water judges shall serve notice by mail of the entry of the order providing for the reopening and review of a decree or decrees to the department and to the persons entitled to receive service of notice under 85-2-232(1).

(4) Notice of the reopening and review of a preliminary or final decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation that cover the water division or divisions in which the decreed basin is located.

(5) An objection may not cause a reopening and review of a claim unless the objection is filed with the appropriate water court within 180 days after the issuance of the order under subsection (1). This period of time may, for good cause shown, be extended by the water judge for up to two 90-day periods if an application for extension is made within the original 180-day period or any extension of it.

(6) The water judge shall provide notice to the claimant of any timely objection to the claim and, after further reasonable notice to the claimant, the objector or objectors, and other interested persons, set the matter for hearing. The water judge may conduct individual or consolidated hearings, and any hearing must be conducted according to the Montana Rules of Civil Procedure. On an order of the water judge, a hearing may be conducted by a water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(7) The water judge shall, on the basis of any hearing held on the matter, take action as warranted from the evidence, including dismissal of the objection or modification of the portion of the decree describing the contested claim.

(8) An order or decree modifying a previously issued final decree as a result of procedures described in this section may be appealed in the same manner as provided for an appeal taken from a final order of a district court.

(9) An order or decree modifying a previously issued preliminary decree as a result of procedures described in this section may be appealed under 85-2-235 when the preliminary decree has been made a final decree.

(10) An order requiring the department to examine a basin that was initially verified is limited to the types of claims in the basin that were identified in the petition as provided in 85-2-282 or the types of claims identified in an order that the water court issued on its own initiative. *(Terminates June 30, 2028—sec. 10, Ch. 269, L. 2015.)*

85-2-237. *(Effective July 1, 2028)* **Reopening and review of decrees.** (1) After July 1, 1996, the water judges shall by order reopen and review, within the limits set forth by the procedures described in this section, all preliminary or final decrees:

(a) that have been issued but have not been noticed throughout the water divisions; or

(b) for basins for which claims have been filed under 85-2-221(3).

(2) (a) Each order must state that the water judge will reopen the decree or decrees and, upon a hearing, review the water court's determination of any claim in the decree or decrees if an objection to the claim has been filed for the purpose of protecting rights to the use of water from sources:

(i) within the basin for which the decree was entered; or

(ii) in other basins that are hydrologically connected to sources within the basin for which the decree was entered.

(b) A person may not raise an objection to a matter in a reopened decree if the person was a party to the matter when the matter was previously litigated and resolved as the result of the previous objection process, unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the judgment is void;

(v) any other reason justifying relief from the operation of the judgment.

(c) The objection must be made in accordance with the procedure for filing objections under 85-2-233.

(3) The water judges shall serve notice by mail of the entry of the order providing for the reopening and review of a decree or decrees to the department and to the persons entitled to receive service of notice under 85-2-232(1).

(4) Notice of the reopening and review of a preliminary or final decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation that cover the water division or divisions in which the decreed basin is located.

(5) No objection may cause a reopening and review of a claim unless the objection is filed with the appropriate water court within 180 days after the issuance of the order under subsection (1). This period of time may, for good cause shown, be extended by the water judge for up to two 90-day periods if an application for extension is made within the original 180-day period or any extension of it.

(6) The water judge shall provide notice to the claimant of any timely objection to the claim and, after further reasonable notice to the claimant, the objector or objectors, and other interested persons, set the matter for hearing. The water judge may conduct individual or consolidated hearings, and any hearing must be conducted according to the Montana Rules of Civil Procedure. On an order of the water judge, a hearing may be conducted by a water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(7) The water judge shall, on the basis of any hearing held on the matter, take action as warranted from the evidence, including dismissal of the objection or modification of the portion of the decree describing the contested claim.

(8) An order or decree modifying a previously issued final decree as a result of procedures described in this section may be appealed in the same manner as provided for an appeal taken from a final order of a district court.

(9) An order or decree modifying a previously issued preliminary decree as a result of procedures described in this section may be appealed under 85-2-235 when the preliminary decree has been made a final decree.

History: En. Sec. 1, Ch. 586, L. 1989; amd. Sec. 8, Ch. 629, L. 1993; amd. Sec. 13, Ch. 288, L. 2005; amd. Sec. 3, Ch. 269, L. 2015.

85-2-238 through 85-2-240 reserved.

85-2-241. Repealed. Sec. 38, Ch. 389, L. 1999.

History: En. Sec. 18, Ch. 697, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

85-2-242. Repealed. Sec. 12, Ch. 651, L. 1987.

History: En. Sec. 19, Ch. 697, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

85-2-243. Department assistance to water judges. (1) The department, subject to the direction of the water judge, shall:

(a) provide such information and assistance as may be required by the water judge to adjudicate claims of existing rights;

(b) establish information and assistance programs to aid claimants in the filing of claims for existing rights required by 85-2-221;

(c) conduct field investigations of claims that the water judge in consultation with the department determines warrant investigation; and

(d) provide the water judge with all information in its possession bearing upon existing rights, including all declarations filed with and all information gathered by the department with respect to existing rights in the Powder River basin.

(2) Department assistance to a water judge must be without cost to the judicial districts wholly or partly within the affected water division. Expenses incurred by the department under subsection (1) must be paid from the money appropriated to it for the adjudication program by the legislature to carry out its function under subsection (1) and when that appropriation is expended then the department is no longer required to provide further assistance.

History: **En. Sec. 21, Ch. 697, L. 1979; amd. Sec. 8, Ch. 651, L. 1987.**

Cross-References

Department duties, 85-2-112.

85-2-244 through 85-2-246 reserved.

85-2-247. Purpose. (1) Because the state of Montana is the owner of all water in the state, pursuant to Article IX, section 3, of the Montana constitution, the legislature recognizes that it is in the state's best interest to ensure that valid issues raised as a result of claims examination in the statewide adjudication of pre-July 1, 1973, water rights are resolved before a final decree is issued.

(2) If as a result of the examination or the prior verification conducted by the department an issue remark is attached to a claim, the information resulting in the issue remark and the issue remark must be weighed against the claimed water right.

History: **En. Sec. 1, Ch. 526, L. 2005.**

85-2-248. Resolution of issue remarks other than by objection. (1) In resolving issue remarks other than through the objection process provided for in 85-2-233, the water court shall proceed as provided in this section.

(2) All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.

(3) The water court shall review each factual or legal issue remark not resolved as a result of the filing of an objection to determine if information in the claim file or information obtained by the court provides a sufficient basis to resolve the identified issue remark or to determine if the issue remark can be corrected as a clerical error.

(4) If an issue remark cannot be resolved pursuant to subsection (3), the water court shall notify the claimant in writing that each factual or legal issue remark must be resolved as provided in this section.

(5) (a) The water court shall require the claimant to confer with the department in an informal effort to resolve any identified issue remarks.

(b) If an issue remark is resolved to the satisfaction of the department and the claimant, the claimant, with the assistance of the department, shall prepare and file any documents that are needed to support the resolution. The department shall file a separate memorandum with its recommendation regarding the disposition of any issue remarks involved in the proposed resolution.

(c) If an issue remark is not resolved, the department shall file a notice with the water court informing the water court that the issue remark was not resolved.

(6) The water court shall schedule proceedings to resolve all issue remarks that remain unresolved pursuant to subsections (2) through (5). All proceedings must include the department pursuant to 85-2-243 and any parties appearing in opposition to the claim, including the attorney general if the attorney general has intervened.

(7) (a) If an unresolved issue remark involves nonperfection or abandonment, the water court shall join the state of Montana through the attorney general as a necessary party to resolve the issue remark. The water court shall notify the attorney general of the joinder.

(b) Except as provided in subsection (7)(a), for any claim containing an issue remark that has not been resolved pursuant to subsections (2) through (5), the attorney general may intervene as a matter of right.

(c) The attorney general may adopt rules to implement the responsibilities and duties of the attorney general imposed by this section.

(8) The water court shall hold an evidentiary hearing on any issue remark that remains unresolved pursuant to subsections (2) through (7).

(9) If a claimant fails to appear at a scheduled evidentiary hearing or fails to comply with an order issued by the water court in its review of issue remarks, the water court, upon motion or its own initiative, may, in its ruling:

(a) amend the elements of the claim to conform with the information in the claim file;

(b) amend the elements in the claim to conform with information obtained by the court;

(c) remove the issue remark; or

(d) terminate the claim.

(10) Following the conclusion of the evidentiary hearing and the expiration of any posthearing briefing schedule, the water court shall render its written decision.

(11) Any proposal by the claimant to resolve an issue remark without an evidentiary hearing must be in writing, signed by each owner of the claim at issue, and filed with the water court with any supporting documentation.

(12) The water court's decision on each issue remark that it reviews pursuant to this section must be documented in a master's report or water judge's order. The water court shall modify the abstract of each claim in accordance with its written decision and remove any applicable issue remark.

History: **En. Sec. 2, Ch. 526, L. 2005.**

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.
Report of water master, 85-2-233.

85-2-249. Prioritization of workload. The chief water judge may place a higher priority on hearing objections to claims in a basin than on resolving issue remarks.

History: **En. Sec. 3, Ch. 526, L. 2005.**

Cross-References

Chief Water Judge, 3-7-221.
Objections to water claims, 85-2-233, 85-2-308.

85-2-250. Definition. For the purposes of 85-2-247 through 85-2-249, "issue remark" means a statement added to an abstract of water right in a water court decree by the department or the water court to identify potential factual or legal issues associated with the claim. The term also includes "gray area remarks" that were the result of the verification process.

History: **En. Sec. 4, Ch. 526, L. 2005.**

85-2-251 through 85-2-269 reserved.

85-2-270. *(Temporary)* **Findings — purpose.** (1) The purpose of 85-2-271, 85-2-280 through 85-2-282, and this section is to:

(a) complete claims examination and the initial decree phase;

(b) reexamine claims in basins that were verified and were not subject to the supreme court examination rules when the water court has received a petition and issued an order pursuant to 85-2-282 or the water court has issued an order on its own initiative; and

(c) ensure that the product of the adjudication is enforceable decrees.

(2) With adequate funding, it is realistic and feasible for the department to complete claims examination and reexamination of verified basins for which the water court has received a petition and issued an order pursuant to 85-2-282 or the water court has issued an order on its own initiative by June 30, 2015. It is also realistic and feasible for the water court to issue a preliminary or temporary preliminary decree by June 30, 2024, for all basins in Montana. *(Terminates June 30, 2028—secs. 10, 11, Ch. 269, L. 2015.)*

History: **En. Sec. 1, Ch. 288, L. 2005; amd. Sec. 3, Ch. 319, L. 2007; amd. Sec. 4, Ch. 269, L. 2015; amd. Sec. 1, Ch. 72, L. 2019.**

Cross-References

Water claims, 85-2-221.
Temporary preliminary, preliminary, and supplemental preliminary decrees, 85-2-231.

85-2-271. *(Temporary)* **Benchmarks — action taken if not met — claims examination priority.** (1) (a) The water court shall prioritize basins for the purpose of claims examination and reexamination by the department.

(b) The chief water judge has the authority to order that reexamination be completed for a certain basin in a higher priority than claims examination. If the chief water judge issues an order requiring the department to reexamine claims rather than examining claims, the number of claims that were reexamined must be counted against the amount of claims that the department is required to examine for that period.

(2) (a) The benchmarks that are provided in subsection (2)(b) must be met. If the benchmarks are not met, money for water adjudication may not be included in the department's base budget.

(b) The benchmarks are as follows:

(i) the department shall reexamine 10,000 verified claims by June 30, 2017;

(ii) the department shall reexamine 30,000 verified claims by June 30, 2019;

(iii) the department shall examine or reexamine 65,000 claims by June 30, 2022;

(iv) the department shall examine or reexamine 85,000 claims by June 30, 2023;

(v) the department shall examine or reexamine 95,000 claims by June 30, 2024; and

(vi) the department shall examine or reexamine all timely filed claims by June 30, 2025. *(Terminates June 30, 2028—secs. 10, 11, Ch. 269, L. 2015.)*

History: En. Sec. 2, Ch. 288, L. 2005; amd. Sec. 4, Ch. 319, L. 2007; amd. Sec. 5, Ch. 269, L. 2015; amd. Sec. 2, Ch. 154, L. 2021.

85-2-272. Repealed. Sec. 9, Ch. 319, L. 2007.
History: En. Sec. 3, Ch. 288, L. 2005.

85-2-273. Repealed. Sec. 9, Ch. 319, L. 2007.
History: En. Sec. 4, Ch. 288, L. 2005.

85-2-274 and 85-2-275 reserved.

85-2-276. Repealed. Sec. 9, Ch. 319, L. 2007.
History: En. Sec. 5, Ch. 288, L. 2005.

85-2-277 and 85-2-278 reserved.

85-2-279. Repealed. Sec. 9, Ch. 319, L. 2007.
History: En. Sec. 6, Ch. 288, L. 2005.

85-2-280. *(Temporary)* **Water adjudication account.** (1) There is a water adjudication account within the state special revenue fund created in 17-2-102.

(2) By August 15 of each fiscal year, the state treasurer shall transfer the amount necessary when combined with available and unencumbered fund balance, to fund the amount appropriated by the legislature in the general appropriation act from the state general fund to the water adjudication account for the sole purpose of funding the water adjudication program within the department and the water court.

(3) Interest and income earnings on the water adjudication account must be deposited in the account and may not be transferred to any other account prior to June 30, 2028.

(4) Money remaining in the water adjudication account on June 30, 2028, must be transferred to the water right appropriation account provided for in 85-2-318.

(5) If the accountability benchmarks contained in 85-2-271 are not met, expenditures from the account in the previous biennium may not be included in the department's base budget, as defined in 17-7-102, for the current biennium. *(Terminates June 30, 2028—secs. 10, 11, Ch. 269, L. 2015.)*

History: En. Sec. 7, Ch. 288, L. 2005; amd. Sec. 5, Ch. 319, L. 2007; amd. Sec. 24, Ch. 486, L. 2009; amd. Sec. 6, Ch. 269, L. 2015; amd. Sec. 4, Ch. 119, L. 2023.

85-2-281. *(Temporary)* **Reporting requirements.** The department and the water court shall:

(1) provide quarterly reports to the water policy interim committee in accordance with 5-11-210 on:

(a) the progress of the adjudication on a basin-by-basin basis;

(b) the number of basins for which examination was completed during the reporting period;

(c) the number and type of decrees issued in the preceding year and in each quarter of the current year and an update on summary reports in review;

(d) the number of claims resolved each month in the preceding year;

(e) the percentage of claims resolved by basin, limited to basins under active review by the water court, after issuance of a decree and passage of the deadline of the notices of intent to appear; and

(f) compact status describing compacts approved by the water court and pending compacts;

(2) include a status report on the adjudication in their presentation to the applicable appropriation subcommittees during each legislative session including the number of basins for which examination was completed during the reporting period; and

(3) provide a budget that outlines how each of the entities will be funded in the next biennium, including general fund money and state special revenue funds. *(Terminates June 30, 2028—secs. 10, 11, Ch. 269, L. 2015.)*

History: En. Sec. 8, Ch. 288, L. 2005; amd. Sec. 7, Ch. 319, L. 2007; amd. Sec. 10, Ch. 122, L. 2015; amd. Secs. 7, 9, Ch. 269, L. 2015; amd. Sec. 119, Ch. 261, L. 2021.

85-2-282. *(Temporary)* **Examination of claims in verified basins.** (1) At any time prior to the issuance of a final decree, in basins that were evaluated using the verification process rather than the examination process, the owners of water rights in the basin or a specified area in the basin may petition the water court to examine claims in the basin or an area in the basin pursuant to the supreme court rules.

(2) The owners of at least 15% of the number of water rights affected by the proposed reexamination shall sign the petition.

(3) At a minimum, the petition must provide:

(a) the specific water right purpose or water right purposes to be examined; and

(b) the elements to be examined.

(4) (a) The water judge shall evaluate each petition and determine if reexamination is necessary to provide greater accuracy to the adjudication.

(b) The water judge may request public comment on the petition.

(5) If the water judge determines reexamination should be conducted, the water judge shall issue an order that provides:

(a) what water right purpose or water right purposes must be examined by the department;

(b) the elements to be examined;

(c) final disposition of the reexamination information developed by the department; and

(d) the timeframe in which the reexamination must be completed.

(6) The water court may issue an order requiring reexamination on its own initiative. The order must provide the information contained in subsection (5).

(7) Upon receipt of the reexamination information from the department, the water court shall notify the users in the basin or the specified area in the basin identified in the petition of the final results of the reexamination and shall notify them regarding further steps or actions being taken as a result of the reexamination.

(8) Any actions taken as a result of the reexamination must be conducted in accordance with this part. *(Terminates June 30, 2028—sec. 10, Ch. 269, L. 2015.)*

History: En. Sec. 9, Ch. 288, L. 2005; amd. Sec. 8, Ch. 269, L. 2015.

85-2-283. Repealed. Sec. 9, Ch. 319, L. 2007.

History: En. Sec. 10, Ch. 288, L. 2005.

Part 3
Appropriations, Permits, and Certificates of Water Rights

Part Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

85-2-301. Right to appropriate — recognition and confirmation of permits issued after July 1, 1973. (1) After July 1, 1973, a person may not appropriate water except as provided in this chapter. A person may appropriate water only for a beneficial use.

(2) (a) Only the department may appropriate water by permit for transport outside the following river basins:

(i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(b) The department may lease water subject to this subsection (2) under the provisions of 85-2-141.

(3) A right to appropriate water may not be acquired by any other method, including by adverse use, adverse possession, prescription, or estoppel. The method prescribed by this chapter is exclusive.

(4) All permit actions of the department after July 1, 1973, are recognized and confirmed subject to this part and any terms, conditions, and limitations placed on a permit by the department.

(5) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.

History: En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L. 1974; amd. Sec. 8, Ch. 485, L. 1975; amd. Sec. 4, Ch. 416, L. 1977; amd. Sec. 1, Ch. 470, L. 1977; R.C.M. 1947, 89-880(1); amd. Sec. 3, Ch. 573, L. 1985; amd. Sec. 5, Ch. 497, L. 1997; amd. Sec. 1, Ch. 112, L. 2011; amd. Sec. 6, Ch. 294, L. 2015.

Cross-References

State water plan, 85-1-203.
Appropriate defined, 85-2-102.
Beneficial use defined, 85-2-102.
Penalties, 85-2-122.
Priority, 85-2-401.

85-2-302. *(Temporary)* **Application for permit or change in appropriation right.** (1) Except as provided in 85-2-306 and 85-2-369, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works unless the person applies for and receives a permit or an authorization for a change in appropriation right from the department.

(2) The department shall adopt rules:

(a) for the preapplication meeting process pursuant to subsection (3)(b);

(b) that are necessary to determine whether or not an application is correct and complete, based on the provisions applicable to issuance of a permit under this part or a change in appropriation right pursuant to Title 85, chapter 2, part 4; and

(c) in compliance with Title 2, chapter 4.

(3) (a) The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.

(b) Prior to filing the application, an applicant may participate in a preapplication meeting with the department to discuss the application process. During this meeting, the applicant and the department will discuss the technical analyses to be completed for the application and if the applicant or the department will complete the technical analyses. A preapplication meeting must be documented on a form provided by the department and included with the application.

(4) (a) Subject to subsection (4)(b), the applicant shall submit a correct and complete application. The determination of whether an application is correct and complete must be based on rules adopted under subsection (2) that are in effect at the time the application is submitted.

(b) If an application is for a permit to appropriate water with a point of diversion, conveyance, or place of use on national forest system lands, the application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(c) If an application is for a permit or change in appropriation right from a shared point of a diversion or through a shared means of conveyance, the application is not correct and complete until the applicant submits proof to the department that a written notice of the application was provided to each owner of an appropriation right sharing the point of diversion or means of conveyance. For purposes of this subsection (4), "conveyance" means a canal, ditch, flume, pipeline, or other constructed waterway.

(5) (a) The department shall notify the applicant of any defects in an application within:

(i) 15 business days of receipt of the application if the applicant has participated in a preapplication meeting; or

(ii) 30 business days of receipt of the application if the applicant has not participated in a preapplication meeting.

(b) The defects in an application must be identified by reference to the rules adopted under subsection (2).

(c) If the department does not notify the applicant of any defects within the time allowed in subsection (5)(a), the application must be treated as a correct and complete application.

(6) (a) An applicant shall submit a deficiency response to the defects identified in subsection (5)(a) within 120 days of the date of initial notification of the defects. If the applicant does not provide a deficiency response within 120 days, the application must be terminated.

(b) The department shall determine if the application is correct and complete or terminate the application within 30 days of receipt of a deficiency response. An application not terminated within 30 days of the deficiency response is considered correct and complete.

(7) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation. *(Terminates June 30, 2031—sec. 9, Ch. 244, L. 2023.)*

85-2-302. *(Effective July 1, 2031)* **Application for permit or change in appropriation right.** (1) Except as provided in 85-2-306 and 85-2-369, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works unless the person applies for and receives a permit or an authorization for a change in appropriation right from the department.

(2) The department shall adopt rules that are necessary to determine whether or not an application is correct and complete, based on the provisions applicable to issuance of a permit under this part or a change in appropriation right pursuant to Title 85, chapter 2, part 4. The rules must be adopted in compliance with Title 2, chapter 4.

(3) The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.

(4) (a) Subject to subsection (4)(b), the applicant shall submit a correct and complete application. The determination of whether an application is correct and complete must be based on rules adopted under subsection (2) that are in effect at the time the application is submitted.

(b) If an application is for a permit to appropriate water with a point of diversion, conveyance, or place of use on national forest system lands, the application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(c) If an application is for a permit or change in appropriation right from a shared point of a diversion or through a shared means of conveyance, the application is not correct and complete until the applicant submits proof to the department that a written notice of the application was provided to each owner of an appropriation right sharing the point of diversion or means of conveyance. For purposes of this subsection (4), "conveyance" means a canal, ditch, flume, pipeline, or other constructed waterway.

(5) The department shall notify the applicant of any defects in an application within 180 days. The defects must be identified by reference to the rules adopted under subsection (2). If the department does not notify the applicant of any defects within 180 days, the application must be treated as a correct and complete application.

(6) An application does not lose priority of filing because of defects if the application is corrected or completed within 120 days of the date of initial notification of the defects.

(7) An application not corrected or completed within 120 days of the date of initial notification of the defects is terminated.

(8) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.

History: En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L. 1974; amd. Sec. 8, Ch. 485, L. 1975; amd. Sec. 4, Ch. 416, L. 1977; amd. Sec. 1, Ch. 470, L. 1977; R.C.M. 1947, 89-880(2); amd. Sec. 6, Ch. 448, L. 1983; amd. Sec. 12, Ch. 769, L. 1991; amd. Sec. 2, Ch. 370, L. 1993; amd. Sec. 1, Ch. 422, L. 1999; amd. Sec. 2, Ch. 78, L. 2001; amd. Sec. 1, Ch. 574, L. 2003; amd. Sec. 4, Ch. 213, L. 2007; amd. Sec. 2, Ch. 391, L. 2007; amd. Sec. 2, Ch. 335, L. 2013; amd. Sec. 7, Ch. 294, L. 2015; amd. Sec. 1, Ch. 192, L. 2019; amd. Sec. 1, Ch. 209, L. 2019; amd. Sec. 1, Ch. 244, L. 2023.

Cross-References

Department duties, 85-2-112.
Priority, 85-2-401.

85-2-303. Permit for conversion of nonproductive oil or gas well. A person who desires to convert a nonproductive oil or gas well to a water well shall file a notice of completion or apply for a permit, depending on the maximum appropriation of the well, as otherwise provided in this chapter. The date of appropriation shall be the date of filing the notice of completion or the application for a permit.

History: En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L. 1974; amd. Sec. 8, Ch. 485, L. 1975; amd. Sec. 4, Ch. 416, L. 1977; amd. Sec. 1, Ch. 470, L. 1977; R.C.M. 1947, 89-880(6); amd. Sec. 7, Ch. 448, L. 1983.

Cross-References

Abandoned oil and gas wells — reclamation, Title 82, ch. 10, part 4.
Measurement of water, 85-2-103.
Priority, 85-2-401.
Production of water from oil and gas wells — hearings — jurisdiction of Board, 85-2-510.

85-2-304. Appropriation by state board of land commissioners. The state board of land commissioners may, through the department, at its discretion, appropriate any available waters for use upon state lands and authorize the construction of irrigation works for these lands. The appropriation must be made in the same way and under the same laws as those governing the appropriation of water by individuals.

History: En. Sec. 2, Ch. 85, L. 1905; re-en. Sec. 2254, Rev. C. 1907; re-en. Sec. 1965, R.C.M. 1921; amd. Sec. 3, Ch. 280, L. 1965; amd. Sec. 113, Ch. 253, L. 1974; R.C.M. 1947, 81-2018; amd. Sec. 446, Ch. 418, L. 1995.

Cross-References

Development of state lands — types of developments, 77-1-605.
Department powers over state waters, 85-1-204.
Construction of works by Department, 85-1-206.

85-2-305. Appropriation permit for reservoir. A person intending to appropriate water by means of a reservoir shall apply for a permit as prescribed in this chapter.

History: En. Sec. 25, Ch. 452, L. 1973; R.C.M. 1947, 89-889.

85-2-306. Exceptions to permit requirements. (1) (a) Except as provided in subsection (1)(b), ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works.

(b) If another person has rights in the ground water development works, water may be appropriated with the written consent of the person with those property rights or, if the ground water development works are on national forest system lands, with any prior written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the certificate.

(c) If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

(a) according to a permit received pursuant to 85-2-508; or

(b) according to the requirements of a rule promulgated pursuant to 85-2-506.

(3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring:

(i) when the appropriation is made by a local governmental fire agency organized under Title 7, chapter 33, and the appropriation is used only for emergency fire protection, emergency fire training, and emergency fire-related operations, which may include enclosed storage;

(ii) when a maximum appropriation of 350 gallons a minute or less is used in nonconsumptive geothermal heating or cooling exchange applications, all of the water extracted is returned without delay to the same source aquifer, and the distance between the extraction well and both the nearest existing well and the hydraulically connected surface waters is more than twice the distance between the extraction well and the injection well;

(iii) when the appropriation is outside a stream depletion zone, is 35 gallons a minute or less, and does not exceed 10 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding 10 acre-feet, regardless of the flow rate, requires a permit; or

(iv) when the appropriation is within a stream depletion zone, is 20 gallons a minute or less, and does not exceed 2 acre-feet a year, except that a combined appropriation from the same source by two or more wells or developed springs exceeding this limitation requires a permit.

(b) (i) Before appropriating groundwater by means of a well or developed spring pursuant to subsection (3)(a)(iii) or (3)(a)(iv), a person shall file with the department, on a form provided by the department, a correct and complete notice of intent to appropriate groundwater.

(ii) The department shall notify the person of any defects in the notice of intent to appropriate groundwater within 10 business days.

(iii) A notice of intent to appropriate groundwater that is not corrected and completed within 60 days of a notice of defects is terminated.

(iv) Within 10 business days of determining that a notice of intent to appropriate groundwater is correct and complete, the department shall review the notice for compliance with subsection (3)(a) and shall authorize or deny the notice of intent to appropriate groundwater. If the department denies the notice of intent to appropriate groundwater, the department shall include the reasons for the denial.

(v) Unless extended by the department, an appropriation under subsection (3) must be completed within 5 years from the date the notice of intent to appropriate groundwater is authorized. One extension may be granted by the department for up to 5 additional years. The request for an extension must be filed on a form provided by the department and must demonstrate that progress has been made toward putting the water to beneficial use.

(c) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.

(ii) Water use by a public water supply system subject to Title 75, chapter 6, part 1, is considered perfected and the appropriation of water for beneficial use complete when construction of the public water supply system is finished, at which time a notice of completion may be filed and must include a copy of the approval of the public water supply system by the department of environmental quality. All water use by a public water supply system pursuant to subsection (3)(a)(iii) or (3)(a)(iv) must be measured using a totalizing metering device, and measurements must be reported annually on a form prescribed by the department. Noncompliance with metering and reporting requirements may result in a fine determined by the department.

(iii) On receipt of the notice of completion, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A correct and complete notice of completion for an appropriation under subsection (3)(a)(iii) or (3)(a)(iv) must establish that the appropriation was completed in substantial accordance with the notice of intent to appropriate groundwater authorized by the department under subsection (3)(b). A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 60 days of notification of defects.

(iv) If a notice is not corrected and completed within the time allowed, the department authorization expires and a new notice of intent to appropriate groundwater is required to use water under subsection (3)(a)(iii) or (3)(a)(iv).

(d) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification or a written federal special use authorization as necessary under subsection (1). The original of the certificate must be sent to the appropriator and a duplicate must be maintained in the department's centralized database. The date of filing of the notice of completion is the date of priority of the right.

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

(b) the appropriation is less than 30 acre-feet a year;

(c) the appropriation is from an ephemeral stream, an intermittent stream, or another source other than a perennial flowing stream; and

(d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a stock water provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(b) If the impoundment or pit is on national forest system lands, an application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113.

(9) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.

History: En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L. 1974; amd. Sec. 8, Ch. 485, L. 1975; amd. Sec. 4, Ch. 416, L. 1977; amd. Sec. 1, Ch. 470, L. 1977; R.C.M. 1947, 89-880(5), (7); amd. Sec. 1, Ch. 30, L. 1981; amd. Sec. 1, Ch. 160, L. 1981; amd. Sec. 1, Ch. 357, L. 1981; amd. Sec. 8, Ch. 448, L. 1983; amd. Sec. 1, Ch. 499, L. 1985; amd. Sec. 2, Ch. 535, L. 1987; amd. Sec. 1, Ch. 432, L. 1989; amd. Sec. 13, Ch. 769, L. 1991; amd. Sec. 4, Ch. 805, L. 1991; amd. Sec. 9, Ch. 629, L. 1993; amd. Sec. 447, Ch. 418, L. 1995; amd. Sec. 1, Ch. 250, L. 1999; amd. Sec. 3, Ch. 78, L. 2001; amd. Sec. 3, Ch. 161, L. 2005; amd. Sec. 5, Ch. 213, L. 2007; amd. Sec. 1, Ch. 86, L. 2009; amd. Sec. 1, Ch. 96, L. 2011; amd. Sec. 1, Ch. 97, L. 2011; amd. Sec. 2, Ch. 421, L. 2013; amd. Sec. 8, Ch. 294, L. 2015; amd. Sec. 1, Ch. 455, L. 2015; amd. Sec. 1, Ch. 243, L. 2017; amd. Sec. 2, Ch. 264, L. 2017; amd. Sec. 1, Ch. 561, L. 2023; amd. Sec. 7, Ch. 708, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 7, Ch. 708, L. 2025. Amendment effective January 1, 2026.

Applicability: Section 9, Ch. 708, L. 2025, provided: "[This act] applies to subdivisions that are reviewed pursuant to Title 76, chapter 3, on or after [the effective date of this act]." Effective January 1, 2026.

Cross-References

Ground water, Title 85, ch. 2, part 5.

85-2-307. *(Temporary)* **Notice of receipt of application for permit or change in appropriation right — draft preliminary determination — extensions — updated draft preliminary determination — public comments — issuance of preliminary determination.** (1) On receipt of an application for a permit or a change in appropriation right, the department shall publish notice of receipt of the application on the department's website. The notice must be updated on the website when an application is determined to be correct and complete.

(2) Within 60 days of receiving a correct and complete application if the applicant has completed a preapplication meeting or within 120 days of receiving a correct and complete application if the applicant has not completed a preapplication meeting, the department:

(a) may meet with the applicant, the persons listed in subsection (4)(f), and persons who may claim standing pursuant to 85-2-308 to discuss the application;

(b) shall make a written draft preliminary determination as to whether or not the application satisfies the applicable criteria for issuance of a permit or change in appropriation right; and

(c) may include conditions in the written draft preliminary determination to satisfy applicable criteria for issuance of a permit or change in appropriation right.

(3) (a) An applicant has 15 business days from issuance of a draft preliminary determination to request an extension of time to submit additional information. The department may grant an extension of up to 180 days for the applicant to submit additional evidence. The department shall provide the applicant with written notice of the extension deadline.

(b) The department may revise its draft preliminary determination based on information received under subsection (3)(a). The department shall issue an updated draft preliminary determination within 60 days after the earliest date of:

(i) the extension deadline set pursuant to subsection (3)(a); or

(ii) the department's receipt of written notice from the applicant stating submittal of all additional information to the department is considered correct and complete.

(c) If the department's updated draft preliminary determination:

(i) is to deny the application, the department shall hold a hearing as provided in 85-2-310; or

(ii) is to grant the application or grant the application in modified form, the department shall provide notice of the opportunity to provide public comment pursuant to subsection (4).

(d) If the applicant does not request an extension of time, the department shall:

(i) provide notice of the draft preliminary determination to grant the application or grant the application in modified form and also provide notice of the opportunity to provide public comment pursuant to subsection (4); or

(ii) issue a preliminary determination to deny the application and hold a hearing as provided in 85-2-310.

(4) (a) The department shall prepare a notice of the opportunity to provide public comment on a draft preliminary determination or an updated draft preliminary determination issued for an application.

(b) The notice of the opportunity to provide public comment must:

(i) state that no more than 30 days after the date of publication, a person may file a public comment about the application with the department on a form provided by the department; and

(ii) contain facts pertinent to the application, including a summary of the draft preliminary determination and any conditions.

(c) The department shall publish the notice once in a newspaper of general circulation in the area of the source of the appropriation right and post the notice on the department website.

(d) A public comment must identify how one or more criteria for the issuance of a permit or a change in appropriation right is not adequately addressed in a draft preliminary determination issued for the application. The department may adopt additional rules for public comments.

(e) A person has standing to file a public comment pursuant to this section if the property, water rights, or interests of the person would be adversely affected by the proposed appropriation.

(f) Before the date of publication of the notice of the opportunity to provide public comment, the department shall also serve the notice by first-class mail on:

(i) an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation;

(ii) any purchaser under contract for deed, as defined in 70-20-115, of property that, according to the records of the department, may be affected by the proposed appropriation; and

(iii) any public agency that has reserved waters in the source under 85-2-316.

(g) The department may, in its discretion, also serve notice on any state agency or other person the department feels may be interested in or affected by the proposed appropriation.

(h) The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

(5) (a) Within 30 days after the close of the period to provide public comment, the department shall consider the public comments, respond to the public comments, and issue a preliminary determination to grant the application, grant the application in modified form, or deny the application.

(b) If, after considering the public comments subject to subsection (5)(a), the department's preliminary determination is to:

(i) deny the application, the department shall hold a hearing as provided in 85-2-310; or

(ii) grant the application or grant the application in a modified form, a person may file an objection to an application pursuant to 85-2-308.

(c) If no public comments are received pursuant to subsection (4), the department's preliminary determination is adopted as the final determination. *(Terminates June 30, 2031—sec. 9, Ch. 244, L. 2023.)*

85-2-307. *(Effective July 1, 2031)* **Notice of application for permit or change in appropriation right.** (1) Upon receipt of an application for a permit or a change in appropriation right, the department shall publish notice of receipt of the application on the department's website.

(2) (a) Within 120 days of the receipt of a correct and complete application for a permit or change in appropriation right, the department:

(i) may meet informally with the applicant, the persons listed in subsection (2)(d), and persons who may claim standing pursuant to 85-2-308 to discuss the application;

(ii) shall make a written preliminary determination as to whether or not the application satisfies the applicable criteria for issuance of a permit or change in appropriation right; and

(iii) may include conditions in the written preliminary determination to satisfy applicable criteria for issuance of a permit or change in appropriation right.

(b) If the preliminary determination proposes to grant an application, the department shall prepare a notice containing the facts pertinent to the application, including the summary of the preliminary determination and any conditions, and shall publish the notice once in a newspaper of general circulation in the area of the source.

(c) If the preliminary determination proposes to deny an application, the process provided in 85-2-310 must be followed.

(d) Before the date of publication, the department shall also serve the notice by first-class mail upon:

(i) an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation;

(ii) any purchaser under contract for deed, as defined in 70-20-115, of property that, according to the records of the department, may be affected by the proposed appropriation; and

(iii) any public agency that has reserved waters in the source under 85-2-316.

(e) The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation.

(f) The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

(3) The notice must state that by a date set by the department, not less than 15 days or more than 60 days after the date of publication, persons may file with the department written objections to the application.

History: En. Sec. 17, Ch. 452, L. 1973; amd. Sec. 9, Ch. 485, L. 1975; R.C.M. 1947, 89-881; amd. Sec. 2, Ch. 357, L. 1981; amd. Sec. 9, Ch. 448, L. 1983; amd. Sec. 29, Ch. 526, L. 1983; amd. Sec. 3, Ch. 535, L. 1987; amd. Sec. 3, Ch. 370, L. 1993; amd. Sec. 5, Ch. 70, L. 2005; amd. Sec. 2, Ch. 251, L. 2009; amd. Sec. 1, Ch. 52, L. 2015; amd. Sec. 2, Ch. 244, L. 2023; amd. Sec. 1, Ch. 13, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 13, L. 2025. Amendment effective February 27, 2025.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.
Changes in appropriation rights, 85-2-402.
Transfer of appropriation rights, 85-2-403.

85-2-308. *(Temporary)* **Objections.** (1) (a) The department shall provide notice of the opportunity to object to a preliminary determination issued pursuant to 85-2-307(5). The notice must state that no more than 30 days after the date of publication of the notice, a person may file a written objection to the application with the department.

(b) A person who has standing pursuant to this section, including the applicant, may object only to issues already identified in a public comment properly filed with the department pursuant to 85-2-307(4) or raised in a hearing pursuant to 85-2-310.

(2) (a) An objection to an application under this chapter must be filed by the date specified by the department under subsection (1).

(b) The objection to an application for a permit must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-311 are not met.

(3) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-320, if applicable, 85-2-402, 85-2-407, 85-2-408, and 85-2-436, if applicable, are not met.

(4) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.

(5) For an application for a reservation of water, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-316 are not met.

(6) An objector to an application under this chapter shall file a correct and complete objection on a form prescribed by the department within the time period stated on the public notice associated with the application. In order to assist both applicants and objectors, the department shall adopt rules in accordance with this chapter delineating the components of a correct and complete objection. For instream flow water rights for fish, wildlife, and recreation, the rules must require the objector to describe the reach or portion of the reach of the stream or river subject to the instream flow water right and the beneficial use that is adversely affected and to identify the point or points where the instream flow water right is measured and monitored. The department shall notify the objector of any defects in an objection. An objection not corrected or completed within 15 business days from the date of notification of the defects is terminated.

(7) An objection is valid if the objector has standing pursuant to subsection (4), has filed a correct and complete objection within the prescribed time period, and has stated the applicable information required under this section and rules of the department. *(Terminates June 30, 2031—sec. 9, Ch. 244, L. 2023.)*

85-2-308. *(Effective July 1, 2031)* **Objections.** (1) (a) An objection to an application under this chapter must be filed by the date specified by the department under 85-2-307(3).

(b) The objection to an application for a permit must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-311 are not met.

(2) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-320, if applicable, 85-2-402, 85-2-407, 85-2-408, and 85-2-436, if applicable, are not met.

(3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.

(4) For an application for a reservation of water, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-316 are not met.

(5) An objector to an application under this chapter shall file a correct and complete objection on a form prescribed by the department within the time period stated on the public notice associated with the application. In order to assist both applicants and objectors, the department shall adopt rules in accordance with this chapter delineating the components of a correct and complete objection. For instream flow water rights for fish, wildlife, and recreation, the rules must require the objector to describe the reach or portion of the reach of the stream or river subject to the instream flow water right and the beneficial use that is adversely affected and to identify the point or points where the instream flow water right is measured and monitored. The department shall notify the objector of any defects in an objection. An objection not corrected or completed within 15 days from the date of notification of the defects is terminated.

(6) An objection is valid if the objector has standing pursuant to subsection (3), has filed a correct and complete objection within the prescribed time period, and has stated the applicable information required under this section and rules of the department.

History: En. Sec. 18, Ch. 452, L. 1973; R.C.M. 1947, 89-882; amd. Sec. 10, Ch. 448, L. 1983; amd. Sec. 5, Ch. 805, L. 1991; amd. Sec. 4, Ch. 370, L. 1993; amd. Sec. 2, Ch. 422, L. 1999; amd. Sec. 2, Ch. 574, L. 2003; amd. Sec. 6, Ch. 70, L. 2005; amd. Sec. 6, Ch. 213, L. 2007; amd. Sec. 2, Ch. 448, L. 2007; amd. Sec. 3, Ch. 251, L. 2009; amd. Sec. 3, Ch. 244, L. 2023.

Cross-References

Administrative proceedings, 85-2-121.
Changes in appropriation rights, 85-2-402.
Transfer of appropriation rights, 85-2-403.

85-2-309. Hearings on objections — jurisdiction. (1) If the department determines that an objection to an application for a permit under 85-2-311, an application for a change in appropriation right under 85-2-402, or a notice of change in appropriation right under 85-2-429 states a valid objection, it shall hold a contested case hearing, pursuant to Title 2, chapter 4, part 6, on the objection within 90 days from the date set by the department for the filing of objections after serving notice of the hearing by first-class mail upon the applicant and the objector, unless the department certifies an issue to the district court for determination by a water judge under subsection (2). The department may consolidate hearings if more than one objection is filed to an application. The department may extend the 90-day deadline for good cause shown or upon request of the applicant and all objectors. The department shall file in its records proof of the service by affidavit of the department.

(2) (a) At any time prior to commencement or before the conclusion of a hearing as provided in subsection (1), the department may in its discretion certify to the district court all factual and legal issues involving the adjudication or determination of the water rights at issue in the hearing, including but not limited to issues of abandonment, quantification, or relative priority dates. Certified controversies must be given priority by a water judge over all other adjudication matters.

(b) If the department fails to certify an issue as provided in this section after a timely request by a party to the hearing, the department shall include its denial to certify as part of the record of the hearing.

(c) Upon determination of the issues certified to it by the department, the court shall remand the matter to the department for further processing of the application under this chapter.

(3) Subsection (2) does not apply in the case of a matter considered at a hearing under this section pursuant to 85-2-316 or 85-2-322.

History: En. Sec. 19, Ch. 452, L. 1973; R.C.M. 1947, 89-883; amd. Sec. 6, Ch. 596, L. 1985; amd. Sec. 6, Ch. 497, L. 1997; amd. Sec. 3, Ch. 422, L. 1999; amd. Sec. 4, Ch. 251, L. 2009; amd. Sec. 3, Ch. 679, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 679, L. 2025. Amendment effective October 1, 2025.

Cross-References

Duties of Chief Water Judge, 3-7-223.
Water Courts — jurisdiction, 3-7-501.
Administrative proceedings, 85-2-121.

85-2-310. *(Temporary)* **Action on application for permit or change in appropriation right.** (1) (a) If the department issues an updated draft preliminary determination or a preliminary determination to deny an application for a permit or a change in appropriation right under 85-2-307, unless the applicant withdraws the application, the department shall hold a hearing pursuant to 2-4-604 after serving notice of the hearing by first-class mail on the applicant for the applicant to show cause by a preponderance of the evidence as to why the permit or change in appropriation right should not be denied.

(b) (i) On request from the applicant, the department shall appoint a hearing examiner who did not participate in the preliminary determination.

(ii) The applicant may make only one request pursuant to this subsection (1)(b) for a different hearing examiner.

(c) A decision to deny a permit or change in appropriation right following a hearing under this subsection (1) is final.

(2) (a) A hearing under subsection (1) is limited to the evidence presented in support of the application considered by the department pursuant to 85-2-302 and 85-2-307.

(b) If the department determines at a hearing held under subsection (1) that an application may proceed as a draft preliminary determination to grant or a draft preliminary determination to grant in a modified form, then the department shall modify the draft preliminary determination consistent with the determination of the hearing and proceed to provide notice of the opportunity to provide public comment pursuant to 85-2-307(4).

(c) The department shall issue its determination on a hearing held under subsection (1) within 90 days of the close of the administrative record.

(3) If valid objections filed pursuant to 85-2-308 are not received on an application or if valid objections are unconditionally withdrawn and the department preliminarily determined to grant the permit or change in appropriation right, the department shall grant the permit or change in appropriation right as proposed in the preliminary determination pursuant to 85-2-307.

(4) If valid objections filed pursuant to 85-2-308 to an application are received and withdrawn with conditions stipulated with the applicant and the department preliminarily determined to grant the permit or change in appropriation right under 85-2-307, the department shall grant the permit or change in appropriation right subject to conditions as necessary to satisfy applicable criteria.

(5) The department shall deny, grant in a modified form, or grant with or without conditions a permit under 85-2-311 or a change in appropriation right under 85-2-402 by issuing a final determination within 90 days after the administrative record is closed for a hearing held pursuant to 85-2-309.

(6) If an application is to appropriate water with a point of diversion, conveyance, or place of use on national forest system lands, any application approved by the department is subject to any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of the water applied for and any terms, conditions, and limitations related to the use of water contained in any special use authorization required by federal law.

(7) The department may cease action on an application for a permit or change in appropriation right and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for either of these reasons must be accompanied by a statement of the reasons for which it was returned, and for a permit application there is not a right to a priority date based on the filing of the application. Returning an application pursuant to this subsection is a final decision of the department.

(8) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

(a) an application is not corrected and completed as required by 85-2-302;

(b) the appropriate filing fee is not paid;

(c) the application does not document:

(i) a beneficial use of water;

(ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan describing when and how much water will be put to a beneficial use. The project plan must include a reasonable timeline for the completion of the project and the actual application of the water to a beneficial use.

(iv) for appropriations not covered in subsection (8)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and

(v) except as provided in subsection (9), if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement costs or fees, if any, are not paid as required by 85-2-124.

(9) If water applied for is to be marketed by the applicant to other users for the purpose of aquifer recharge or mitigation, the applicant is exempt from the provisions of subsection (8)(c)(v). The applicant shall provide information detailing the proposed place of use. *(Terminates June 30, 2031—sec. 9, Ch. 244, L. 2023.)*

85-2-310. *(Effective July 1, 2031)* **Action on application for permit or change in appropriation right.** (1) (a) If the department proposes to deny an application for a permit or a change in appropriation right under 85-2-307, unless the applicant withdraws the application, the department shall hold a hearing pursuant to 2-4-604 after serving notice of the hearing by first-class mail upon the applicant for the applicant to show cause by a preponderance of the evidence as to why the permit or change in appropriation right should not be denied.

(b) (i) Upon request from the applicant, the department shall appoint a hearing examiner who did not participate in the preliminary determination.

(ii) The applicant may make only one request pursuant to this subsection (1)(b) for a different hearing examiner.

(2) A proposal to grant a permit or change in appropriation right with or without conditions following a hearing on a proposal to deny the application must proceed as if the department proposed to grant the permit or change in appropriation right in its preliminary determination pursuant to 85-2-307.

(3) If valid objections are not received on an application or if valid objections are unconditionally withdrawn and the department preliminarily determined to grant the permit or change in appropriation right, the department shall grant the permit or change in appropriation right as proposed in the preliminary determination pursuant to 85-2-307.

(4) If valid objections to an application are received and withdrawn with conditions stipulated with the applicant and the department preliminarily determined to grant the permit or change in appropriation right, the department shall grant the permit or change in appropriation right subject to conditions as necessary to satisfy applicable criteria.

(5) The department shall deny or grant with or without conditions a permit under 85-2-311 or a change in appropriation right under 85-2-402 within 90 days after the administrative record is closed.

(6) If an application is to appropriate water with a point of diversion, conveyance, or place of use on national forest system lands, any application approved by the department is subject to any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of the water applied for and any terms, conditions, and limitations related to the use of water contained in any special use authorization required by federal law.

(7) (a) Except as provided in subsection (6), if the department proposes to grant a permit or change in appropriation right in modified form, the applicant must be given an opportunity to be heard. The addition of conditions or changes to conditions required for approval does not constitute a modification of the application.

(b) The department shall serve notice of a preliminary determination to grant a permit or change in appropriation right in a modified form by first-class mail upon the applicant, with a notice that the applicant may obtain a hearing pursuant to 2-4-604 to show cause by a preponderance of the evidence as to why the permit or change in appropriation right should not be preliminarily determined to be granted in the modified form by filing a request within 30 days after the notice is mailed. The notice must state that the permit or change in appropriation right will be preliminarily determined to be granted as modified unless a hearing is requested.

(8) The department may cease action upon an application for a permit or change in appropriation right and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for either of these reasons must be accompanied by a statement of the reasons for which it was returned, and for a permit application there is not a right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection is a final decision of the department.

(9) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

(a) an application is not corrected and completed as required by 85-2-302;

(b) the appropriate filing fee is not paid;

(c) the application does not document:

(i) a beneficial use of water;

(ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan describing when and how much water will be put to a beneficial use. The project plan must include a reasonable timeline for the completion of the project and the actual application of the water to a beneficial use.

(iv) for appropriations not covered in subsection (9)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and

(v) except as provided in subsection (10), if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement costs or fees, if any, are not paid as required by 85-2-124.

(10) If water applied for is to be marketed by the applicant to other users for the purpose of aquifer recharge or mitigation, the applicant is exempt from the provisions of subsection (9)(c)(v). The applicant must provide information detailing the proposed place of use.

History: (1), (2)En. Sec. 20, Ch. 452, L. 1973; amd. Sec. 10, Ch. 485, L. 1975; amd. Sec. 5, Ch. 416, L. 1977; Sec. 89-884, R.C.M. 1947 (3)En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L. 1974; amd. Sec. 8, Ch. 485, L. 1975; amd. Sec. 4, Ch. 416, L. 1977; amd. Sec. 1, Ch. 470, L. 1977; Sec. 89-880, R.C.M. 1947; R.C.M. 1947, 89-880(3), 89-884; amd. Sec. 3, Ch. 357, L. 1981; amd. Sec. 1, Ch. 399, L. 1985; amd. Sec. 4, Ch. 535, L. 1987; amd. Sec. 10, Ch. 659, L. 1991; amd. Sec. 4, Ch. 422, L. 1999; amd. Sec. 7, Ch. 70, L. 2005; amd. Sec. 20, Ch. 337, L. 2005; amd. Sec. 7, Ch. 213, L. 2007; amd. Sec. 5, Ch. 251, L. 2009; amd. Sec. 3, Ch. 29, L. 2011; amd. Sec. 3, Ch. 335, L. 2013; amd. Sec. 4, Ch. 244, L. 2023.

Cross-References

Fees for environmental impact statements, 85-2-124.
Priority, 85-2-401.

85-2-311. Criteria for issuance of permit. (1) A permit may be issued under this part prior to the adjudication of existing water rights in a source of supply. In a permit proceeding under this part, there is no presumption that an applicant for a permit cannot meet the statutory criteria of this section prior to the adjudication of existing water rights pursuant to this chapter. In making a determination under this section, the department may not alter the terms and conditions of an existing water right or an issued certificate, permit, or state water reservation. Except as provided in subsections (3) and (4), the department shall issue a permit if the applicant proves by a preponderance of evidence that the following criteria are met:

(a) (i) there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate; and

(ii) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;

(B) identification of existing legal demands of water rights on the source of supply throughout the area of potential impact by the proposed use; and

(C) analysis of the evidence on physical water availability and the existing legal demands of water rights, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands of water rights on the supply of water.

(b) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be determined based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that the applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied. An applicant is not required to prove a lack of adverse effect for any water right identified in a written consent to approval filed pursuant to subsection (9) in connection with a permit application.

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the applicant has a possessory interest or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use, or if the proposed use has a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit;

(f) the water quality of a prior appropriator will not be adversely affected;

(g) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and

(h) the ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(2) The applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (1)(f), (1)(g), or (1)(h), as applicable, may not be met. For the criteria set forth in subsection (1)(g), only the department of environmental quality or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

(3) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in subsection (1) are met;

(b) the proposed appropriation is a reasonable use. A finding must be based on a consideration of the following:

(i) the existing legal demands of water rights on the state water supply, as well as projected legal demands of water rights, such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (4) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(ii) and (4)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the existing legal demands of water rights placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.

(5) Subject to 85-2-360, to meet the preponderance of evidence standard in this section, the applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the applicant, the department, the U.S. geological survey, or the U.S. natural resources conservation service and other specific field studies.

(6) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section.

(7) The department may adopt rules to implement the provisions of this section.

(8) For an application for ground water in a basin closed pursuant to 85-2-319, 85-2-321, 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, the applicant shall comply with the provisions of 85-2-360 in addition to the requirements of this section.

(9) The department may not conduct an adverse effects analysis on a water right if the water right holder files a written consent to approval of an application for a permit.

History: En. Sec. 21, Ch. 452, L. 1973; amd. Sec. 1, Ch. 156, L. 1975; amd. Sec. 1, Ch. 307, L. 1977; amd. Sec. 6, Ch. 416, L. 1977; R.C.M. 1947, 89-885; amd. Sec. 4, Ch. 357, L. 1981; amd. Sec. 11, Ch. 448, L. 1983; amd. Sec. 2, Ch. 706, L. 1983; amd. Sec. 4, Ch. 573, L. 1985; amd. Sec. 2, Ch. 432, L. 1989; amd. Sec. 1, Ch. 495, L. 1989; amd. Sec. 5, Ch. 370, L. 1993; amd. Sec. 1, Ch. 460, L. 1993; (7)En. Sec. 5, Ch. 460, L. 1993; amd. Sec. 448, Ch. 418, L. 1995; amd. Sec. 7, Ch. 497, L. 1997; amd. Sec. 8, Ch. 213, L. 2007; amd. Sec. 3, Ch. 391, L. 2007; amd. Sec. 4, Ch. 335, L. 2013; amd. Sec. 2, Ch. 243, L. 2017; amd. Sec. 1, Ch. 38, L. 2019; amd. Sec. 1, Ch. 317, L. 2021; amd. Sec. 1, Ch. 171, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 171, L. 2025. Amendment effective October 1, 2025.

Cross-References

Declaration of policy and purpose, 85-2-101.
Definition of beneficial use, 85-2-102.
Controlled ground water areas — permits to appropriate, 85-2-508.

85-2-312. Terms of permit. (1) (a) The department may issue a permit for less than the amount of water requested, but may not issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. The department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria listed in 85-2-311 and subject to subsection (1)(b), and it may issue temporary or seasonal permits. A permit must be issued subject to existing rights and any final determination of those rights made under this chapter.

(b) If the permit is for use of water with a point of diversion, conveyance, or place of use on national forest system lands, the permit is subject to any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of the water under the permit and any terms, conditions, and limitations related to the use of water contained in any special use authorization required by federal law.

(2) The department shall specify in the permit or in any authorized extension of time provided in subsection (3), the time limits for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. The department shall issue the permit or authorized extension of time subject to the terms, conditions, restrictions, and limitations it considers necessary to ensure that the work on the appropriation is commenced, conducted, and completed and that the water is actually applied in a timely manner to the beneficial use specified in the permit.

(3) The department shall by rule or by condition to a permit establish a process allowing for the extension of the time limits specified in the permit for commencement of the appropriation works, completion of construction, and actual application of water to the proposed beneficial use.

(4) (a) If commencement of the appropriation works, completion of construction, or the actual application of water to the proposed beneficial use is not completed within the time limit specified or within an extension of that time limit, the permit expires.

(b) The department shall reinstate an expired permit if the permittee files a written reinstatement request and a project completion notice on forms provided by the department. The reinstatement request and project completion notice must establish the amount of water actually applied to the proposed beneficial use prior to expiration of the permit. Reinstatement of an expired permit under this subsection (4)(b) may not exceed the amount of water actually applied to the proposed beneficial use under the terms of the permit prior to expiration of the permit.

(c) The department shall reinstate the full amount of water authorized by the expired permit, including any portion that was not actually applied to the proposed beneficial use prior to expiration of the permit, if the permittee:

(i) files a written reinstatement request with the department on a form provided by the department;

(ii) proves by clear and convincing evidence that the failure to comply with the permit time limit was the result of excusable neglect; and

(iii) demonstrates that the requirements for an extension of the time limit as set forth by rule or permit condition are satisfied.

(d) A written reinstatement request for an expired permit must be filed within 2 years of the expiration of the permit time limit.

(e) A permit must be reinstated no more than once pursuant to this subsection (4) if the criteria in this subsection (4) have been met. A reinstated permit under subsection (4)(c) must establish time limits for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use.

(5) The original of the permit must be sent to the permittee, and a copy must be kept in the office of the department in Helena. The department shall retain an expired permit in the centralized record system for 2 years.

History: En. Sec. 22, Ch. 452, L. 1973; R.C.M. 1947, 89-886; amd. Sec. 12, Ch. 448, L. 1983; amd. Sec. 5, Ch. 573, L. 1985; amd. Sec. 5, Ch. 535, L. 1987; amd. Sec. 6, Ch. 805, L. 1991; amd. Sec. 9, Ch. 370, L. 1993; amd. Sec. 5, Ch. 422, L. 1999; amd. Sec. 9, Ch. 213, L. 2007; amd. Sec. 1, Ch. 192, L. 2015.

Cross-References

Role and duties of County Clerk and Election Administrator, 7-4-2611.

85-2-313. Provisional permit. (1) A permit authorized prior to the issuance of a final decree pursuant to 85-2-234 in the basin where the permit is located is provisional and is subject to that final decree. A person may not obtain any vested right to an appropriation obtained under a provisional permit by virtue of construction of diversion works, purchase of equipment to apply water, planting of crops, or other action in which the permit would have been denied or modified if the final decree had been available to the department.

(2) (a) Within 60 days after the issuance of a final decree pursuant to 85-2-234, the department shall serve, by first-class mail, owners of record of existing water rights and provisional permits within the decreed basin with a notice of final decree and opportunity to petition for the reduction, modification, or revocation of a provisional permit located in the decreed basin.

(b) The department shall also provide notice to other interested persons who request service of the notice of final decree from the department.

(c) For basins in which a final decree was issued prior to January 1, 2026, the department shall provide notice by January 31, 2026, in accordance with subsections (2)(a) and (2)(b).

(3) (a) An owner of an existing water right in the decreed basin may file a correct and complete petition to reduce, modify, or revoke a provisional permit issued prior to the final decree in the subject basin. Within 180 days of issuance of the notice required under subsection (2), the petition must be:

(i) made on a form prescribed by the department;

(ii) filed with the department; and

(iii) served by first-class mail on all owners of record of the provisional permit.

(b) The department shall notify the petitioner of any defects in a petition within 60 days of the close of the petition period described in subsection (3)(a). A petition that is not corrected and completed within 30 days of the notice of the defects is terminated. If the department does not notify the petitioner of any defects within 60 days, the petition must be treated as correct and complete.

(c) The department shall provide notice of a correct and complete petition to the petitioner and each owner of record of the provisional permit identified in the petition by first-class mail. Within 60 days of the notice, the owner of a provisional permit identified in a petition may file a response to the petition with the department and serve the response on the petitioner by first-class mail.

(d) The petitioner shall prove by a preponderance of the evidence that:

(i) reduction, modification, or revocation of the provisional permit is necessary to protect the petitioner's existing water right determined in the final decree;

(ii) the provisional permit would have been denied or modified if the final decree had been available to the department; and

(iii) based on the findings of the final decree, water could not be considered legally available at the time of issuance of the permit.

(e) Within 120 days of the close of the 60-day response period provided in subsection (3)(c), the department shall deny the petition or propose to reduce, modify, or revoke the provisional permit based on the information in the petition, the response, the final decree, the records of the department, and other evidence submitted to the department. The department shall consider whether, based on the final decree, unappropriated waters or legally available water existed at the time the provisional permit was issued.

(i) If the department proposes to reduce, modify, or revoke a provisional permit, the department shall provide the owner of the provisional permit with an opportunity to show cause why the department should not take the proposed action. If the owner of the provisional permit fails to show sufficient cause, the department shall reduce, modify, or revoke the provisional permit in accordance with the department's findings and conclusions.

(ii) A department determination to deny a petition is final.

(4) If no petition to reduce, modify, or revoke a provisional permit is filed pursuant to subsection (3), the department shall issue a certificate of water right in accordance with 85-2-315.

History: En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L. 1974; amd. Sec. 8, Ch. 485, L. 1975; amd. Sec. 4, Ch. 416, L. 1977; amd. Sec. 1, Ch. 470, L. 1977; R.C.M. 1947, 89-880(4); amd. Sec. 8, Ch. 497, L. 1997; amd. Sec. 1, Ch. 453, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 453, L. 2025. Amendment effective October 1, 2025.

Cross-References

Priority, 85-2-401.

85-2-314. Revocation or modification of permit or change in appropriation right. (1) (a) If the work on an appropriation is not commenced, prosecuted, or completed within the time stated in the permit or an extension of the time stated in the permit, if the water is not being applied to the beneficial use contemplated in the permit or change in appropriation right, or if the permit or change in appropriation right is otherwise not being followed, the department may, after notice, require the permittee or the holder of the change in appropriation right to show cause why the permit or change in appropriation right should not be modified or revoked.

(b) If the permittee or holder of the change in appropriation right fails to show sufficient cause, the department may modify or revoke the permit or change in appropriation right.

(2) (a) A permittee or holder of a change in appropriation right may petition the department to modify or remove a condition of approval or reduce the amount of the permit or change authorization.

(b) The petition must be submitted on a form designated by the department, is subject to the criteria of 85-2-311 and 85-2-402, and must be processed in the same manner as an application made pursuant to 85-2-302, 85-2-307 through 85-2-309, and 85-2-310(1) through (5) except that:

(i) the department may waive the public notice of a preliminary determination to grant the petition if the department finds, on the basis of information reasonably available to it, that the petition as proposed in the application will not adversely affect the rights of other appropriators;

(ii) if the department issues a preliminary determination to grant the petition and waives public notice, the determination becomes final;

(iii) the department may condition a preliminary determination to grant the petition in order to meet the criteria under 85-2-311 and 85-2-402; and

(iv) a preliminary determination to deny a petition is final. Denial of a petition does not affect the permit or change authorization.

History: En. Sec. 23, Ch. 452, L. 1973; R.C.M. 1947, 89-887; amd. Sec. 13, Ch. 448, L. 1983; amd. Sec. 8, Ch. 70, L. 2005; amd. Sec. 5, Ch. 335, L. 2013.

Cross-References

Due process, Art. II, sec. 17, Mont. Const.
Beneficial use defined, 85-2-102.

85-2-315. Certificate of water right. (1) (a) On actual application of water to the proposed beneficial use within the time allowed, the permittee shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed. The department shall review the certified statement and may inspect the appropriation to verify whether the appropriation was completed in substantial accordance with the terms of the permit, including any reduction or modification pursuant to 85-2-313.

(b) If the department determines that the appropriation has been completed in substantial accordance with the terms, conditions, restrictions, and limitations of the permit approval and any reduction or modification pursuant to 85-2-313, the department shall issue a certificate of water right for the permit.

(c) If the department determines that the appropriation was not completed in substantial accordance with the terms, conditions, restrictions, and limitations of the permit approval, including any reduction or modification pursuant to 85-2-313, the department may, after notice, require the permittee to show cause why the permit should not be modified or revoked pursuant to 85-2-314.

(2) After a final decree is issued in a basin pursuant to 85-2-234, the department shall issue a certificate of water right for a change in appropriation right that is verified or modified pursuant to 85-2-402(9) and (10).

(3) The original of a certificate of water right must be sent to the owner of the permit or change in appropriation right, and a duplicate must be maintained in the department's centralized database.

History: En. Sec. 24, Ch. 452, L. 1973; R.C.M. 1947, 89-888; amd. Sec. 14, Ch. 448, L. 1983; amd. Sec. 7, Ch. 805, L. 1991; amd. Sec. 10, Ch. 370, L. 1993; amd. Sec. 2, Ch. 453, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 453, L. 2025. Amendment effective October 1, 2025.

Cross-References

Role and duties of County Clerk and Election Administrator, 7-4-2611.
Department duties, 85-2-112.
Certificate of water right, 85-2-236.

85-2-316. State reservation of waters. (1) The state, any political subdivision or agency of the state, or the United States or any agency of the United States may apply to the department to acquire a state water reservation for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at periods or for a length of time that the department designates.

(2) (a) Water may be reserved for existing or future beneficial uses in the basin where it is reserved, as described by the following basins:

(i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(b) A state water reservation may be made for an existing or future beneficial use outside the basin where the diversion occurs only if stored water is not reasonably available for water leasing under 85-2-141 and the proposed use would occur in a basin designated in subsection (2)(a).

(3) (a) The department shall adopt rules that are necessary to determine whether or not an application is correct and complete based on the provisions applicable to issuance of a state water reservation. The rules must be adopted in compliance with Title 2, chapter 4.

(b) An applicant shall submit a correct and complete application. The determination of whether an application is correct and complete must be based on rules adopted under this subsection (3) that are in effect at the time the application is submitted. The department shall proceed in accordance with 85-2-302 with regard to any defects in the application.

(c) The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.

(d) Upon receiving a correct and complete application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided for in 85-2-309, the department shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, must be paid by the applicant. In addition, a reasonable proportion of the department's cost of preparing an environmental analysis must be paid by the applicant unless waived by the department upon a showing of good cause by the applicant.

(4) (a) Except as provided in 85-20-1401, the department shall issue a state water reservation if the applicant establishes to the department by a preponderance of evidence:

(i) the purpose of the reservation;

(ii) the need for the reservation;

(iii) the amount of water necessary for the purpose of the reservation;

(iv) that the reservation is in the public interest.

(b) In determining the public interest under subsection (4)(a)(iv), the department shall issue a water reservation for withdrawal and transport for use outside the state if the applicant proves by clear and convincing evidence that:

(i) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(ii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(i) and (4)(b)(ii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a state water reservation to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, use, and reservation of water.

(5) If the purpose of the state water reservation requires construction of a storage or diversion facility, the applicant shall establish to the department by a preponderance of evidence that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(6) (a) Upon issuing a state water reservation for the purpose of maintaining a minimum flow, level, or quality of water, the appropriation of water is complete.

(b) The department shall limit any state water reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams are not subject to the limit under this subsection (6)(b).

(7) A state water reservation issued under this section has a priority of appropriation dating from the filing of a correct and complete application with the department.

(8) (a) A person desiring to use water reserved to a conservation district for agricultural purposes shall make application for the use with the district, and the district, upon approval of the application, shall inform the department of the approved use and issue the applicant an authorization for the use. The department shall maintain records of all uses of water reserved to conservation districts and be responsible, when requested by the districts, for rendering technical and administrative assistance within the department's staffing and budgeting limitations in the preparation and processing of the applications for the conservation districts. The department shall, within its staffing and budgeting limitations, complete any feasibility study requested by the districts within 12 months of the time that the request was made. The department shall extend the time allowed to develop a plan identifying projects for using a district's reservation as long as the conservation district makes a good faith effort, within its staffing and budget limitations, to develop a plan.

(b) Upon actual application of water to the proposed beneficial use, the authorized user shall notify the conservation district. The notification must contain a certified statement by a person with experience in the design, construction, or operation of project works for agricultural purposes describing how the reserved water was put to use. The department or the district may then inspect the appropriation to determine if it has been completed in substantial accordance with the authorization.

(9) A state water reservation issued under this section may not adversely affect any rights in existence at that time. The department may issue a state water reservation subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria of this section.

(10) (a) Except for a reservation provided in subsection (6) or a reservation provided in 85-20-1401, the department shall, at least once every 10 years, review existing state water reservations to ensure that the objectives of the reservations are being met.

(b) The department shall provide the water policy interim committee a summary of the reviews before September 15, 2026, in accordance with 5-11-210.

(c) Following a review pursuant to this subsection (10) and except as provided in 85-2-331, at the request of the entity holding a water reservation or when the objectives of a state water reservation are not being met, the department may:

(i) extend the time period to complete the appropriation of water;

(ii) modify the reservation; or

(iii) revoke the reservation.

(d) Any undeveloped water made available as a result of a revocation or modification under this subsection (10) is available for appropriation by others pursuant to this part.

(11) Except as provided in 85-20-1401, the department may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate the state water reservation or portion of the reservation to an applicant who is a qualified reservant under this section. Reallocation of water reserved pursuant to a state water reservation may be made by the department following notice and hearing if the department finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water may not adversely affect the priority date of the reservation, and the reservation retains its priority date despite reallocation to a different entity for a different use. The department may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.

(12) A reservant may not make a change in a state water reservation under this section, except as permitted under 85-2-402 and this subsection. If the department approves a change, the department shall give notice and require the reservant to establish that the criteria in subsection (4) will be met under the approved change.

(13) A state water reservation may be transferred to another entity qualified to hold a reservation under subsection (1). Only the entity holding the reservation may initiate a transfer. The transfer occurs upon the filing of a water right ownership update form with the department, together with an affidavit from the entity receiving the reservation establishing

that the entity is a qualified reservant under subsection (1), that the entity agrees to comply with the requirements of this section and the conditions of the reservation, and that the entity can meet the objectives of the reservation as granted. If the transfer of a state water reservation involves a change in an appropriation right, the necessary approvals must be acquired pursuant to subsection (12).

(14) This section does not vest the department with the authority to alter a water right that is not a state water reservation.

(15) The department shall undertake a program to educate the public, other state agencies, and political subdivisions of the state as to the benefits of the state water reservation process and the procedures to be followed to secure the reservation of water. The department shall provide technical assistance to other state agencies and political subdivisions in applying for reservations under this section.

(16) Water reserved under this section is not subject to the state water leasing program established under 85-2-141.

History: En. Sec. 26, Ch. 452, L. 1973; amd. Sec. 11, Ch. 485, L. 1975; amd. Sec. 7, Ch. 416, L. 1977; R.C.M. 1947, 89-890; amd. Sec. 1, Ch. 689, L. 1979; amd. Sec. 1, Ch. 186, L. 1981; amd. Sec. 6, Ch. 357, L. 1981; amd. Sec. 15, Ch. 573, L. 1985; amd. Sec. 1, Ch. 197, L. 1987; amd. Sec. 1, Ch. 389, L. 1989; amd. Sec. 1, Ch. 515, L. 1991; amd. Sec. 6, Ch. 370, L. 1993; amd. Sec. 449, Ch. 418, L. 1995; amd. Sec. 1, Ch. 330, L. 1997; amd. Sec. 9, Ch. 497, L. 1997; amd. Sec. 9, Ch. 70, L. 2005; amd. Sec. 10, Ch. 213, L. 2007; amd. Sec. 1, Ch. 281, L. 2015; amd. Sec. 1, Ch. 121, L. 2017; amd. Sec. 120, Ch. 261, L. 2021; amd. Sec. 1, Ch. 204, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 204, L. 2025. Amendment effective April 17, 2025.

Cross-References

Department powers and duties, 85-2-113.
Reservations within Missouri River Basin and Little Missouri River Basin, 85-2-331.
Suspension of action, 85-2-603.
Reservations, 85-2-605.
Conservancy districts — general provisions, Title 85, ch. 9, part 1.

85-2-317. Limitation on appropriation of ground water. (1) After July 1, 1991, the department may not approve a permit to appropriate ground water in excess of 3,000 acre-feet per year unless:

(a) the applicant proves and the department finds that the applicable criteria in 85-2-311 are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(2) Subsection (1) applies to any permit to appropriate ground water for which application has been made but which has not been granted as of May 7, 1979.

(3) This section does not apply to appropriations by municipalities for municipal use or to appropriations for public water supplies as defined in 75-6-102 or to appropriations for the irrigation of cropland owned and operated by the applicant.

(4) Any person, association, corporation, or other entity that applies for a permit to appropriate ground water, singularly or collectively, for the purpose of circumventing this section is punishable by a fine not exceeding $5,000.

History: En. Secs. 2, 4, Ch. 631, L. 1979; amd. Sec. 8, Ch. 805, L. 1991.

Cross-References

Public water supply, Title 75, ch. 6, part 1.

85-2-318. Water right appropriation account. There is established a water right appropriation account in the state special revenue fund of the state treasury. All fees collected as provided in 85-2-113 shall be deposited in the account to help pay the expenses incurred by the department for administering and enforcing this part, part 1, part 4, and part 5 of chapter 2, Title 85, and Title 37, chapter 43.

History: En. Sec. 5, Ch. 357, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 6, Ch. 535, L. 1987.

Cross-References

Fund structure, 17-2-102.

85-2-319. Permit action in highly appropriated basins or subbasins. (1) With regard to a highly appropriated basin or subbasin, except as provided in 85-20-1401, the legislature may by law preclude permit applications or the department may by rule reject permit applications or modify or condition permits already issued.

(2) A rule may be adopted under this section only upon a petition that is signed by at least 25% or 10, whichever is less, of the users of water in the source of supply within a basin or subbasin or upon petition of the department of environmental quality that alleges facts under subsection (2)(d). The petition must be in a form prescribed by the department and must allege facts showing that throughout or at certain times of the year or for certain beneficial uses:

(a) there are no unappropriated waters in the source of supply;

(b) the rights of prior appropriators will be adversely affected;

(c) further uses will interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved; or

(d) in the case of a petition filed by the department of environmental quality:

(i) the water quality of an appropriator will be adversely affected by the issuance of permits;

(ii) further use will not be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); or

(iii) the ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will be adversely affected by the issuance of permits.

(3) Within 60 days after submission of a petition, the department shall:

(a) deny the petition in writing, stating its reasons for denial;

(b) inform the petitioners that the department shall study the allegations further before denying or proceeding further with the petition; or

(c) initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.

(4) Title 2, chapter 4, parts 1 through 4, govern rulemaking proceedings conducted under this section, except that in addition to the notice requirements of those parts, the department notice of the rulemaking hearing must be published at least once in each week for 3 successive weeks, not less than 30 days before the date of the hearing, in a newspaper of general circulation in the county or counties in which the source is located. The department shall serve by mail a copy of the notice, not less than 30 days before the hearing, upon each person or public agency known from the examination of the records of the department to be a claimant, appropriator, or permitholder of water in the source.

(5) The department may adopt rules to implement the provisions of this section.

History: En. Sec. 17, Ch. 448, L. 1983; amd. Sec. 2, Ch. 460, L. 1993; (5)En. Sec. 5, Ch. 460, L. 1993; amd. Sec. 450, Ch. 418, L. 1995; amd. Sec. 11, Ch. 213, L. 2007.

Cross-References

Petition for rulemaking, 2-4-315.
Department duties, 85-2-112.
Department powers and duties, 85-2-113.

85-2-320. Change in appropriation right authorization for instream flow — United States department of agriculture, forest service. (1) (a) The department shall accept and process an application by the United States department of agriculture, forest service for a change in appropriation right under the provisions of 85-2-402 and this section to protect, maintain, or enhance streamflows to benefit the fishery or other resources on national forest system lands.

(b) To change an appropriation right, the United States department of agriculture, forest service must own the appropriation right that it seeks to change to an instream flow right, the diversion or withdrawal that is to be changed to instream flow must be located within or immediately adjacent to the exterior boundaries of national forest system lands on the date provided in 85-20-1401, Article IV.B.2., and the stream reach in which the streamflow is to be protected, maintained, or enhanced must be located within or immediately adjacent to the exterior boundaries of national forest system lands as of the date provided in 85-20-1401, Article IV.B.2. The application for a change in appropriation right must:

(i) include specific information on the length and location of the stream reach in which the streamflow is to be protected, maintained, or enhanced; and

(ii) provide a detailed streamflow measuring plan that describes the point where and the manner in which the streamflow must be measured.

(2) In addition to the requirements of 85-2-402, when applying for a change in appropriation right pursuant to this section, the United States department of agriculture, forest service, shall prove by a preponderance of the evidence that:

(a) the change in appropriation right authorization to protect, maintain, or enhance streamflows to benefit the fishery or other resources, as measured at a specific point, will not adversely affect the water rights of other persons, except for a water right identified in a written consent to approval filed pursuant to 85-2-402 in connection with the change in appropriation right; and

(b) the amount of water for the proposed instream flow use is needed to protect, maintain, or enhance streamflows to benefit the fishery or other resources.

(3) The proposed method of measurement of the water to protect, maintain, or enhance streamflows to benefit the fishery or other resources must be approved by the department before a change in appropriation right may be approved.

(4) The department is not responsible for costs associated with installing devices or providing personnel to measure streamflows according to the measurement plan submitted under this section.

(5) If an appropriation right is changed pursuant to this section, the priority of the appropriation right remains the same as the appropriation right that was changed.

(6) A change in appropriation right authorization under this section does not create a right of access across private property or allow any infringement of private property rights.

(7) The maximum quantity of water that may be subject to a change in appropriation right authorization to protect, maintain, or enhance streamflows to benefit the fishery or other resources is the amount historically diverted. However, only the amount historically consumed or a smaller amount if specified by the department in the change in appropriation right authorization may be used to protect, maintain, or enhance streamflows to benefit the fishery or other resources below the existing point of diversion.

(8) The department may modify or revoke the change in appropriation right up to 10 years after it is approved if an appropriator with a priority of appropriation that is earlier than the change in appropriation right that was granted submits new evidence that was not available at the time the change in appropriation right was approved that proves by a preponderance of evidence that the appropriator's water right is adversely affected, unless the prior appropriator has filed a written consent to approval pursuant to 85-2-402 in connection with the change.

History: En. Sec. 2, Ch. 213, L. 2007; amd. Sec. 6, Ch. 335, L. 2013; amd. Sec. 3, Ch. 243, L. 2017; amd. Sec. 2, Ch. 171, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 171, L. 2025. Amendment effective October 1, 2025.

85-2-321. Milk River basin — suspension of action on permits — proposal — priority in adjudication process. (1) (a) In order to balance the need for the continued development of Montana's water and for protection of existing rights in the Milk River basin, the department may suspend action on a class of applications or may close a source in the basin and refuse to accept a class of applications, or both, for a permit under this part to appropriate from that source in the basin.

(b) Suspension or closure, or both, may only be proposed by the department.

(c) The proposal must state the source in the basin and class of applications for which suspension or closure, or both, is being proposed and any of the following allegations:

(i) that the frequency of occurrence of unappropriated waters is such that:

(A) any new appropriation from the source for the class of applications will adversely affect the rights of a prior appropriation from the source; or

(B) any new appropriation from the source for the class of applications will interfere unreasonably with another planned use or development for which a permit has been given or for which water has been reserved pursuant to this part in the source; or

(ii) that significant disputes or enforcement problems regarding priority of rights or amounts or duration of water in use by appropriators are in progress or will arise.

(2) After April 8, 1985, the chief water judge shall make issuance of a temporary preliminary decree in the Milk River basin the highest priority in the adjudication of existing water rights pursuant to Title 85, chapter 2, part 2.

History: **En. Sec. 1, Ch. 524, L. 1981; amd. Sec. 2, Ch. 394, L. 1985; amd. Sec. 10, Ch. 497, L. 1997.**

85-2-322. Hearing — order. (1) The department shall conduct a hearing on the proposed suspension or closure, or both. Notice of the hearing must be published at least once in each week for 3 successive weeks, not less than 30 days before the date of the hearing, in a newspaper of general circulation in the county or counties in which the source is located. The department shall serve by mail a copy of the notice and proposal not less than 30 days before the hearing upon each person or public agency known from the examination of the records of the department to be a claimant, appropriator, or permitholder of water in the source.

(2) The department may by order suspend action on and shall close the source and refuse to accept a class of applications if it finds on the basis of the hearing that there is substantial evidence in support of the allegations required by 85-2-321 to be contained in the proposal.

(3) As part of fulfilling the requirements of 2-4-623, the order must define the source and must state the class of applications to which the suspension or closure, or both, applies.

(4) Upon adoption of the order, the department shall refuse to accept any application for a permit under this part for the class of application for which closure is ordered under 85-2-321 and this section. If the order suspends action on pending applications, the department shall notify the applicant that action on the applicant's application is suspended.

(5) Upon notice under 85-2-307 of intent to combine the hearings under 85-2-309 with the hearings under this section, the department may suspend action on pending applications of the class until the hearing is conducted under this section and, as part of its final order, may grant, deny, or condition the applications under 85-2-306, 85-2-310, and 85-2-311 or continue the suspension under this section.

History: **En. Sec. 2, Ch. 524, L. 1981; amd. Sec. 145, Ch. 370, L. 1987; amd. Sec. 4, Ch. 161, L. 2005.**

85-2-323. Request to modify suspension — order. (1) A person or public agency may request that an order be modified or revoked. The request must contain allegations supported by substantial evidence showing that the criteria in 85-2-311 can be met for an application or a class of applications from the source. If not so supported, the department may reject the request without a hearing.

(2) The department may by order after a hearing modify or revoke any order made as provided in 85-2-321 and 85-2-322 upon such notice and in such manner as is reasonable under the circumstances.

History: **En. Sec. 3, Ch. 524, L. 1981.**

85-2-324 through 85-2-326 reserved.

85-2-327. Terminated. Sec. 6, Ch. 352, L. 1991.

History: **En. Sec. 1, Ch. 352, L. 1991.**

85-2-328. Terminated. Sec. 6, Ch. 352, L. 1991.

History: **En. Sec. 2, Ch. 352, L. 1991.**

85-2-329. Definitions. Unless the context requires otherwise, in 85-2-330 and this section, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(2) "Teton River basin" means the drainage area of the Teton River and its tributaries above the confluence of the Teton and Marias Rivers.

History: **En. Sec. 1, Ch. 445, L. 1993; amd. Sec. 11, Ch. 497, L. 1997; amd. Sec. 4, Ch. 391, L. 2007; amd. Sec. 2, Ch. 59, L. 2019.**

85-2-330. Basin closure — exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not grant an application for a permit to appropriate water or for a reservation to reserve water within the Teton River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water if the applicant complies with the provisions of 85-2-360;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for:

(i) domestic use from surface water or pursuant to 85-2-306;

(ii) stock use; or

(iii) use of surface water by or for a municipality;

(d) an application to store water during high spring flows;

(e) temporary emergency appropriations, including for emergency fire training and emergency fire-related operations, as provided for in 85-2-113(3); or

(f) an application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:

(i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

(ii) aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or

(iii) remedial actions taken pursuant to Title 75, chapter 10, part 7.

(3) A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(f) may not be used for dilution.

(4) A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b), (2)(c), (2)(e), or (2)(f).

History: En. Sec. 2, Ch. 445, L. 1993; amd. Sec. 451, Ch. 418, L. 1995; amd. Sec. 5, Ch. 391, L. 2007; amd. Sec. 3, Ch. 264, L. 2017.

85-2-331. Reservations within Missouri River basin and Little Missouri River basin. (1) Except as provided in 85-20-1401, the state, an agency or political subdivision of the state, or the United States or an agency of the United States that desires to apply for a state water reservation in the Missouri River basin or in the Little Missouri River basin shall file an application pursuant to 85-2-316 no later than:

(a) July 1, 1989, for reservation of water above Fort Peck dam; or

(b) July 1, 1991, for reservation of water below Fort Peck dam and in the Little Missouri River basin.

(2) Subject to legislative appropriation, the department shall provide technical and financial assistance to other state agencies and political subdivisions in applying for state water reservations within the Missouri River basin and the Little Missouri River basin.

(3) Except as provided in 85-20-1401 and subsection (5), the department shall:

(a) make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1989, for state water reservations in the Missouri River basin above Fort Peck dam.

(b) make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1991, for state water reservations in the Missouri River basin below Fort Peck dam and in the Little Missouri River basin.

(c) determine which applications or portions of applications are considered to be above or below Fort Peck dam.

(4) Except as provided in 85-20-1401, state water reservations approved by the department under this section have a priority date of July 1, 1985, in the Missouri River basin and a priority date of July 1, 1989, in the Little Missouri River basin. If the department issued a permit under Title 85, chapter 2, part 3, prior to the granting of a state water reservation under this section, the department may subordinate the state water reservation to the permit if it finds that the subordination does not interfere substantially with the purpose of any state water reservation. If the department issued a certificate for ground water development under Title 85, chapter 2, part 3, prior to the granting of a reservation under this section, the department may subordinate the reservation to the certificate if it finds that the subordination does not interfere substantially with the purpose of any reservation and the reservant consents to the subordination. The department shall by order establish the relative priority of applications approved under this section.

(5) The duration of the reservations granted to the municipalities and conservation districts established by the final order of the board of natural resources and conservation establishing water reservations above Fort Peck dam issued July 1, 1992, is extended until those reservations are perfected or until those reservations are revoked pursuant to 85-2-316.

History: En. Sec. 16, Ch. 573, L. 1985; amd. Sec. 3, HB 952, L. 1985; amd. Sec. 7, Ch. 535, L. 1987; amd. Sec. 1, Ch. 134, L. 1989; amd. Sec. 1, Ch. 303, L. 1993; amd. Sec. 452, Ch. 418, L. 1995; amd. Sec. 2, Ch. 330, L. 1997; amd. Sec. 12, Ch. 497, L. 1997; amd. Sec. 12, Ch. 213, L. 2007; amd. Sec. 2, Ch. 204, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 204, L. 2025. Amendment effective April 17, 2025.

85-2-332 through 85-2-334 reserved.

85-2-335. Definitions. Unless the context requires otherwise, in 85-2-335, 85-2-336, and 85-2-338, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302.

(2) "Upper Clark Fork River basin" means the drainage area of the Clark Fork River and the Blackfoot River and their tributaries above the confluence of the Clark Fork River and the Blackfoot River.

History: En. Sec. 1, Ch. 741, L. 1991; amd. Sec. 1, Ch. 487, L. 1995; amd. Sec. 1, Ch. 142, L. 2007; amd. Sec. 6, Ch. 391, L. 2007.

85-2-336. Basin closure — exception. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not grant an application for a permit to appropriate water within the upper Clark Fork River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water if the applicant complies with the provisions of 85-2-360;

(b) an application for a permit to appropriate surface water to conduct aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387. A permit issued to conduct aquatic resource actions may not be used for dilution.

(c) an application for a permit to appropriate water for stock use;

(d) an application to store water;

(e) an application submitted pursuant to 85-20-1401, Article VI; or

(f) an application for power generation at existing hydroelectric dams. The department may not approve a permit for power generation if approval results in additional consumption of water.

(3) A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b) or (2)(c).

(4) Except as provided in 85-20-1401, applications for state water reservations in the upper Clark Fork River basin filed pursuant to 85-2-316 and pending as of May 1, 1991, have a priority date of May 1, 1991. The filing of a state water reservation application does not provide standing to object under 85-2-402.

(5) Except as provided in 85-20-1401, the department may not process or approve applications for state water reservations in the upper Clark Fork River basin filed pursuant to 85-2-316.

History: En. Sec. 2, Ch. 741, L. 1991; amd. Sec. 453, Ch. 418, L. 1995; amd. Sec. 2, Ch. 487, L. 1995; amd. Sec. 13, Ch. 497, L. 1997; amd. Sec. 13, Ch. 213, L. 2007; amd. Sec. 7, Ch. 391, L. 2007.

Cross-References

Permit action in highly appropriated basins or subbasins, 85-2-319.

85-2-337. Repealed. Sec. 27, Ch. 391, L. 2007.

History: En. Sec. 3, Ch. 741, L. 1991; amd. Sec. 1, Ch. 353, L. 1997.

85-2-338. Upper Clark Fork River basin steering committee — membership and duties — comprehensive management plan. (1) There is an upper Clark Fork River basin steering committee. The steering committee has 22 members, who must be appointed as follows:

(a) Each of the six conservation districts in the basin may appoint a member.

(b) Each of the six county commissions in the basin may appoint a member.

(c) The department director shall appoint the remaining 10 committee members and any additional committee members not appointed under subsections (1)(a) and (1)(b) and shall ensure that committee membership includes a balance of affected basin interests and is in conformance with subsection (2).

(2) Steering committee members must be selected on the basis of their knowledge of water use, water management, fish, wildlife, recreation, water quality, and water conservation. Representation on the committee must include but is not limited to representatives from affected:

(a) agriculture;
(b) conservation districts;
(c) departments of state government;
(d) environmental organizations;
(e) industries;
(f) local governments;
(g) reservation applicants;
(h) utilities; and
(i) water users not otherwise represented.

(3) Except as provided in subsection (4), steering committee members shall serve 4-year terms and may serve more than one term.

(4) Initial term lengths must be staggered in conformance with the following:

(a) conservation district appointees shall initially serve for 4 years;

(b) county commissioner appointees shall initially serve for 2 years; and

(c) as determined by the department, half of the department appointees shall initially serve for 2 years and the remainder shall initially serve for 4 years.

(5) The steering committee, consistent with the upper Clark Fork River basin comprehensive management plan, shall:

(a) review the upper Clark Fork River basin closure and exceptions as provided in 85-2-336 no less than every 5 years after April 14, 1995, and make recommendations to the legislature regarding necessary changes;

(b) prepare and submit a report concerning the relationship between surface water and ground water and the cumulative impacts of ground water withdrawals in each subbasin;

(c) provide a forum for all interests to communicate about water issues;

(d) provide education about water law and water management issues;

(e) identify short-term and long-term water management issues and problems and identify alternatives for resolving them;

(f) identify the potential beneficiaries of and a funding mechanism for new and expanded water storage sites;

(g) assist in facilitating the resolution of water-related disputes;

(h) provide coordination with other basin management and planning efforts;

(i) advise government agencies about water management and permitting activities;

(j) consult with local governments within the upper Clark Fork River basin; and

(k) report relevant recommendations as determined necessary to the legislature in accordance with 5-11-210.

History: En. Sec. 4, Ch. 741, L. 1991; amd. Sec. 3, Ch. 487, L. 1995; amd. Sec. 2, Ch. 353, L. 1997; amd. Sec. 2, Ch. 85, L. 2005; amd. Sec. 121, Ch. 261, L. 2021.

85-2-339. Terminated. Sec. 6, Ch. 281, L. 1999.

History: En. Sec. 1, Ch. 281, L. 1999.

85-2-340. Definitions. Unless the context requires otherwise, in 85-2-341 and this section, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(2) "Ground water" has the meaning provided in 85-2-102.

(3) "Jefferson River basin" means the drainage area of the Jefferson River and its tributaries above the confluence of the Jefferson and Missouri Rivers.

(4) "Madison River basin" means the drainage area of the Madison River and its tributaries above the confluence of the Madison and Jefferson Rivers.

History: En. Sec. 1, Ch. 244, L. 1993; amd. Sec. 14, Ch. 497, L. 1997; amd. Sec. 8, Ch. 391, L. 2007; amd. Sec. 3, Ch. 59, L. 2019.

85-2-341. Basin closure — exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not grant an application for a permit to appropriate water or for a state water reservation to reserve water within the Jefferson River basin or Madison River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water if the applicant complies with the provisions of 85-2-360;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for:

(i) domestic use from surface water or pursuant to 85-2-306;

(ii) stock use; or

(iii) use of surface water by or for a municipality;

(d) an application to store water during high spring flows;

(e) an application submitted pursuant to 85-20-1401, Article VI;

(f) temporary emergency appropriations, including for emergency fire training and emergency fire-related operations, as provided for in 85-2-113(3);

(g) an application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:

(i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

(ii) aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or

(iii) remedial actions taken pursuant to Title 75, chapter 10, part 7.

(3) A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(g) may not be used for dilution.

(4) A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b), (2)(c), (2)(f), or (2)(g).

History: En. Sec. 2, Ch. 244, L. 1993; amd. Sec. 454, Ch. 418, L. 1995; amd. Sec. 15, Ch. 497, L. 1997; amd. Sec. 14, Ch. 213, L. 2007; amd. Sec. 9, Ch. 391, L. 2007; amd. Sec. 4, Ch. 264, L. 2017.

85-2-342. Definitions. Unless the context requires otherwise, in 85-2-343 and this section, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(2) "Upper Missouri River basin" means the drainage area of the Missouri River and its tributaries above Morony dam.

History: En. Sec. 1, Ch. 385, L. 1993; amd. Sec. 16, Ch. 497, L. 1997; amd. Sec. 10, Ch. 391, L. 2007; amd. Sec. 4, Ch. 59, L. 2019.

85-2-343. Basin closure — exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not grant an application for a permit to appropriate water or for a reservation to reserve water within the upper Missouri River basin until the final decrees have been issued in accordance with part 2 of this chapter for all of the subbasins of the upper Missouri River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water if the applicant complies with the provisions of 85-2-360;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for:

(i) domestic use from surface water or pursuant to 85-2-306;

(ii) stock use; or

(iii) use of surface water by or for a municipality;

(d) an application to store water during high spring flows;

(e) an application for a permit to use water from the Muddy Creek drainage, which drains to the Sun River, if the proposed use of water will help control erosion in the Muddy Creek drainage;

(f) an application submitted pursuant to 85-20-1401, Article VI;

(g) temporary emergency appropriations, including for emergency fire training and emergency fire-related operations, as provided for in 85-2-113(3); or

(h) an application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:

(i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

(ii) aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or

(iii) remedial actions taken pursuant to Title 75, chapter 10, part 7.

(3) A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(h) may not be used for dilution.

(4) A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b), (2)(c), (2)(e), (2)(g), or (2)(h).

History: En. Sec. 2, Ch. 385, L. 1993; amd. Sec. 455, Ch. 418, L. 1995; amd. Sec. 1, Ch. 441, L. 1997; amd. Sec. 15, Ch. 213, L. 2007; amd. Sec. 11, Ch. 391, L. 2007; amd. Sec. 5, Ch. 264, L. 2017.

85-2-344. Bitterroot River subbasin temporary closure — definitions — exceptions. (1) Unless the context requires otherwise, in this section, the following definitions apply:

(a) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(b) "Bitterroot River basin" means the drainage area of the Bitterroot River and its tributaries above the confluence of the Bitterroot River and Clark Fork of the Columbia River and designated as "Basin 76H".

(c) "Bitterroot River subbasin" means one of the following hydrologically related portions of the Bitterroot River basin:

(i) the mainstem subbasin, designated as "Subbasin 76HA";
(ii) the north end subbasin, designated as "Subbasin 76HB";
(iii) the east side subbasin, designated as "Subbasin 76HC";
(iv) the southeast subbasin, designated as "Subbasin 76HD";
(v) the south end subbasin, designated as "Subbasin 76HE";
(vi) the southwest subbasin, designated as "Subbasin 76HF";
(vii) the west central subbasin, designated as "Subbasin 76HG"; or
(viii) the northwest subbasin, designated as "Subbasin 76HH".

(2) As provided in 85-2-319, the department may not grant an application for a permit to appropriate water or for a state water reservation within a Bitterroot River subbasin until the closure for the basin is terminated pursuant to subsection (5) of this section, except for:

(a) an application for a permit to appropriate ground water if the applicant complies with the provisions of 85-2-360;

(b) an application for a permit to appropriate water for use of surface water by or for a municipality;

(c) temporary emergency appropriations, including for emergency fire training and emergency fire-related operations, pursuant to 85-2-113(3);

(d) an application submitted pursuant to 85-20-1401, Article VI;

(e) an application to store water during high spring flow in an impoundment with a capacity of 50 acre-feet or more; or

(f) an application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:

(i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

(ii) aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or

(iii) remedial actions taken pursuant to Title 75, chapter 10, part 7.

(3) A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(f) may not be used for dilution.

(4) A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b), (2)(c), or (2)(f).

(5) Each Bitterroot River subbasin is closed to new appropriations and new state water reservations until 2 years after all water rights in the subbasin arising under the laws of the state are subject to an enforceable and administrable decree as provided in 85-2-406(4).

History: En. Sec. 1, Ch. 205, L. 1999; amd. Sec. 16, Ch. 213, L. 2007; amd. Sec. 12, Ch. 391, L. 2007; amd. Sec. 117, Ch. 2, L. 2009; amd. Sec. 6, Ch. 264, L. 2017.

85-2-345 through 85-2-349 reserved.

85-2-350. Repealed. Sec.2, Ch. 284, L. 2021.

History: En. Sec. 1, Ch. 447, L. 2001; amd. Sec. 1, Ch. 434, L. 2005; amd. Sec. 71, Ch. 44, L. 2007; amd. Sec. 11, Ch. 122, L. 2015; amd. Sec. 122, Ch. 261, L. 2021.

85-2-351. Notice to permitholders — Clark Fork River basin. The department shall provide a written notice to each person that receives a provisional water use permit to appropriate water within the Clark Fork River basin. The written notice must state: "This provisional water use permit has a priority date that is junior to the rights of senior water right holders in the Clark Fork River Basin. In accordance with Montana law, you may be subject to a call by senior water right holders, in which case you may be required to discontinue your use of water for the period of the call."

History: En. Sec. 2, Ch. 447, L. 2001.

85-2-352 through 85-2-354 reserved.

85-2-355. Definitions. As used in 85-2-306, the following definitions apply:

(1) "Ephemeral stream" means a watercourse that has a channel and that carries water only during and shortly after precipitation or snow melt events.

(2) "Intermittent stream" means a nonperennial flowing stream that has a channel and that annually carries water but is dry for part of the year in most years.

(3) "Perennial flowing stream" means a stream that has flowed continuously during all seasons during dry as well as wet years, except when the flow is interrupted by diversions.

History: En. Sec. 1, Ch. 161, L. 2005; amd. Sec. 2, Ch. 455, L. 2015.

85-2-356 through 85-2-359 reserved.

85-2-360. Ground water appropriation right in closed basins. (1) An application for a ground water appropriation right in a basin closed pursuant to 85-2-319, 85-2-321, 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344 must be accompanied by a hydrogeologic report conducted pursuant to 85-2-361, an aquifer recharge or mitigation plan if required, and an application for a change in appropriation right or rights if necessary.

(2) The department shall use the hydrogeologic report to determine if the proposed appropriation right could result in a net depletion of surface water.

(3) (a) For the purposes of 85-2-360 through 85-2-362, the prediction of net depletion does not mean that an adverse effect on a prior appropriator will occur or if an adverse effect does occur that the entire amount of net depletion is the cause of the adverse effect. A determination of whether or not there is an adverse effect on a prior appropriator as the result of a new appropriation right is a determination that must be made by the department based on the rate, location, and timing of the net depletion that causes the adverse effect relative to the historic beneficial use of the appropriation right that may be adversely affected.

(b) The department may not consider an adverse effect caused by the grant of an application pursuant to this section on any water right listed on a written consent to approval filed pursuant to 85-2-311.

(c) The department may grant a permit for a new appropriation only if the applicant proves by a preponderance of the evidence that the adverse effect would be offset through an aquifer recharge or mitigation plan that meets the requirements of 85-2-362.

History: En. Sec. 14, Ch. 391, L. 2007; amd. Sec. 7, Ch. 335, L. 2013; amd. Sec. 4, Ch. 243, L. 2017; amd. Sec. 3, Ch. 171, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 171, L. 2025. Amendment effective October 1, 2025.

85-2-361. Hydrogeologic report — minimum requirements. (1) A hydrogeologic report must include:

(a) a description of the proposed appropriation, including the point of diversion, the place of use, the area affected by the proposed appropriation, and aquifers and surface waters that may be affected by the proposed appropriation right;

(b) the amount of water diverted and the amount of water consumed by the proposed appropriation right;

(c) the amount of water that will likely be lost in conveyance, the amount of conveyance losses that would return to the system, and the location where conveyance losses would return to the system;

(d) the amount, timing, and location of return flows from the proposed use;

(e) the geology of the affected area, including stratigraphy and structure;

(f) the parameters of the aquifer system within the affected area to include estimates for:

(i) the lateral and vertical extent of the aquifer;

(ii) an analysis of whether the aquifer is confined or unconfined; and

(iii) the transmissivity and storage coefficient related to the aquifer;

(g) the locations of surface waters within the affected area that are subject to an appropriation right that may show a net depletion;

(h) an analysis of whether there may be a net depletion of surface water in the affected area and the rate, location, and timing of the depletion, if any; and

(i) a description of any water treatment method used at the time of any type of injection or introduction of water to the aquifer to ensure compliance with 75-5-410, 85-2-364, and the water quality laws under Title 75, chapter 5.

(2) A hydrogeologic report must be prepared by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer.

(3) The hydrogeologic report, the test well data, the monitoring well data, and other related information must be submitted to the department. The department shall submit this information to the bureau of mines and geology. The bureau of mines and geology shall make the information available through the ground water information center database.

History: En. Sec. 15, Ch. 391, L. 2007; amd. Sec. 8, Ch. 335, L. 2013.

85-2-362. Aquifer recharge or mitigation plans in closed basins — minimum requirements. (1) An applicant whose hydrogeologic report conducted pursuant to 85-2-361 predicts that there will be a net depletion of surface water shall submit an aquifer recharge or mitigation plan. An aquifer recharge or mitigation plan must include:

(a) where and how the water in the plan will be put to beneficial use;

(b) when and where, generally, water for aquifer recharge or mitigation will be required;

(c) the amount of water that is required for aquifer recharge or mitigation;

(d) how the proposed project or beneficial use for which the aquifer recharge or mitigation plan is required will be operated;

(e) evidence that an application for a change in appropriation right, if necessary, has been submitted;

(f) evidence of water availability;

(g) evidence of how the aquifer recharge or mitigation plan will offset the required amount of net depletion of surface water in a manner that will offset an adverse effect on a prior appropriator; and

(h) evidence that the appropriate water quality permits have been granted pursuant to Title 75, chapter 5, as required by 75-5-410 and 85-2-364.

(2) In addition to the requirements of subsection (1), an aquifer recharge plan must include a description of the process by which water will be reintroduced to the aquifer.

(3) The department may not require an applicant, through an aquifer recharge or mitigation plan, to provide more water than the quantity needed to offset the adverse effects on a prior appropriator caused by the net depletion.

(4) An appropriation right that relies on an aquifer recharge or mitigation plan must require that the aquifer recharge or mitigation plan be exercised when the appropriation right is exercised.

History: En. Sec. 16, Ch. 391, L. 2007; amd. Sec. 2, Ch. 104, L. 2009; amd. Sec. 9, Ch. 335, L. 2013.

85-2-363. Repealed. Sec. 13, Ch. 335, L. 2013.

History: En. Sec. 17, Ch. 391, L. 2007.

85-2-364. Department permit coordination — requirements for aquifer recharge or mitigation plans. To ensure that the department and the department of environmental quality are coordinating their respective permitting activities:

(1) an applicant for a new appropriation right pursuant to 85-2-360 that involves aquifer recharge or mitigation shall provide the department with a copy of a relevant discharge permit if necessary; and

(2) the department may not grant a new appropriation right pursuant to 85-2-360 that involves aquifer recharge or mitigation until the discharge permit, if necessary, has been obtained and presented to the department.

History: En. Sec. 18, Ch. 391, L. 2007; amd. Sec. 3, Ch. 104, L. 2009.

85-2-365 through 85-2-367 reserved.

85-2-368. Aquifer storage and recovery projects in closed basins. (1) An aquifer storage and recovery project may be authorized in a closed basin.

(2) In addition to the criteria provided in Title 85, chapter 2, part 3, and 85-2-402, an aquifer storage and recovery project must meet the requirements provided in 75-5-410 and 85-2-360 through 85-2-364.

History: En. Sec. 20, Ch. 391, L. 2007.

85-2-369. Permit not required for testing. (1) Water testing or monitoring is not a beneficial use of water requiring the filing of a permit application.

(2) A permit is not required if the intent of a person is to conduct aquifer tests, water quality tests, water level monitoring, or other testing or monitoring of a water source.

History: En. Sec. 21, Ch. 391, L. 2007; amd. Sec. 10, Ch. 335, L. 2013.

85-2-370. Rulemaking. The department may adopt rules to implement the provisions of 75-5-410, 85-2-360 through 85-2-364, and 85-2-368. The rules must be oriented toward the protection of existing rights from adverse effects from net depletions caused by new appropriation rights or changes in appropriation rights in closed basins and must be consistent with and not exceed the requirements of 75-5-410, 85-2-360 through 85-2-364, and 85-2-368.

History: En. Sec. 22, Ch. 391, L. 2007.

85-2-371 through 85-2-379 reserved.

85-2-380. Stream depletion zones — establishment — rulemaking. (1) Notwithstanding the provisions of subsection (2), the department may establish a stream depletion zone by rule if:

(a) the stream depletion zone lies within a basin closed pursuant to 85-2-319, 85-2-321, 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344; and

(b) there exists a hydrogeologic assessment for the area where the stream depletion zone is proposed that was conducted by either the ground water investigation program established by 85-2-525 or by a hydrogeologist or a qualified licensed professional engineer.

(2) If the provisions of subsection (1) are met, the department shall initiate rulemaking to establish a stream depletion zone upon receipt of a petition signed by:

(a) a municipality, county, conservation district, or local water quality district formed under Title 7, chapter 13, part 45; or

(b) the owners of at least 15% of the flow rate of the surface water rights in the area estimated to be affected, the boundary of which cannot exceed the boundaries of the drainage subdivisions established by the office of water data coordination, United States geological survey, and used by the water court.

(3) The department shall provide notice of the rulemaking by first-class mail to an appropriator of water who, according to the records of the department, may be affected by the proposed stream depletion zone.

(4) In establishing rules related to stream depletion zones, the department shall consult with the ground water investigation program and the ground water assessment steering committee established by 2-15-1523.

History: En. Sec. 3, Ch. 421, L. 2013.

85-2-381. Water right enforcement of ground water uses exempt from permitting — findings and purpose. (1) The legislature finds that:

(a) the state of Montana has managed the allocation of water under the prior appropriation doctrine for more than 100 years;

(b) Article IX, section 3, of the Montana constitution recognizes and confirms all existing water rights;

(c) the right to the use of water through a water right is a recognized property right;

(d) the development of ground water wells that are exempt from permitting may have an adverse effect on other water rights;

(e) the Water Use Act requires the department to coordinate the development and use of the water resources of the state so as to effect full utilization, conservation, and protection of its water resources; and

(f) the ability to develop ground water wells that are exempt from permitting contributes to the full utilization of the water resources of the state.

(2) The establishment of a stream depletion zone pursuant to 85-2-380 provides a conclusive, scientific basis for determining where ground water rights that are exempt from permitting are affecting senior surface water rights.

(3) The purpose of this section is to continue allocating water under the exemptions provided for in 85-2-306 while providing a process by which senior water right holders may protect their rights under the prior appropriation doctrine. Nothing in this section is intended to limit the ability of a senior water right holder to enforce a water right or limit that enforcement to a specific area. Creation of a stream depletion zone is not a prerequisite to an enforcement action.

(4) Any use of water granted by a certificate of water right pursuant to 85-2-306(3)(a) is subject to enforcement according to priority by:

(a) any remedy legally available;

(b) the department, upon receiving a complaint, through the provisions of 85-2-114 and 85-2-122; or

(c) a water commissioner appointed pursuant to 85-5-101.

(5) For each certificate issued pursuant to 85-2-306(3)(a) after October 1, 2013, the department shall include written notice of the provisions of this section.

History: **En. Sec. 4, Ch. 421, L. 2013.**

85-2-382. *(Temporary)* **Fox Hills-Hell Creek aquifer — ground water study.** (1) The bureau of mines and geology shall complete a feasibility study on ground water availability from the Fox Hills-Hell Creek aquifer in the department administrative boundaries 39E, 39FJ, 39G, 39H, 40D, 40E, 40P, 40Q, 40R, 40S, 42A, 42C, 42J, 42K, 42KJ, 42L, and 42M. The study may include:

(a) the compilation and update of new geologic and hydrogeologic data;

(b) a limited field collection of water levels and pressure for wells with historical data;

(c) a preliminary water budget for the Fox Hills-Hell Creek aquifer; and

(d) a preliminary model to evaluate the effects of pumping on water levels and pressure.

(2) The bureau shall report the progress and results of its study to the water policy interim committee established in 5-5-231. The committee shall consider the results of the study and make recommendations to the legislature for department suspension or closure of new ground water appropriations from the Fox Hills-Hell Creek aquifer. *(Terminates June 30, 2027—sec. 4, Ch. 759, L. 2025.)*

History: **En. Sec. 1, Ch. 759, L. 2025.**

Compiler's Comments

Effective Date: Section 3, Ch. 759, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 13, 2025.

Termination: Section 4, Ch. 759, L. 2025, provided: "[This act] terminates June 30, 2027."

Part 4
Utilization of Water

85-2-401. *(Temporary)* **Priority — recognition and confirmation of changes in appropriations issued after July 1, 1973.** (1) As between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of streamflow or the lowering of a water table, artesian pressure, or water level, if the prior appropriator can reasonably exercise the water right under the changed conditions.

(2) Priority of appropriation made under this chapter dates from the filing of an application for a permit with the department, except as otherwise provided in 85-2-301 through 85-2-303, 85-2-306, 85-2-310(7), and 85-2-313.

(3) Priority of appropriation perfected before July 1, 1973, must be determined as provided in part 2 of this chapter.

(4) All changes in appropriation rights actions of the department after July 1, 1973, are recognized and confirmed subject to this part and any terms, conditions, and limitations placed on a change in appropriation authorization by the department. *(Terminates June 30, 2031—sec. 9, Ch. 244, L. 2023.)*

85-2-401. *(Effective July 1, 2031)* **Priority — recognition and confirmation of changes in appropriations issued after July 1, 1973.** (1) As between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of streamflow or the lowering of a water table, artesian pressure, or water level, if the prior appropriator can reasonably exercise the water right under the changed conditions.

(2) Priority of appropriation made under this chapter dates from the filing of an application for a permit with the department, except as otherwise provided in 85-2-301 through 85-2-303, 85-2-306, 85-2-310(8), and 85-2-313.

(3) Priority of appropriation perfected before July 1, 1973, must be determined as provided in part 2 of this chapter.

(4) All changes in appropriation rights actions of the department after July 1, 1973, are recognized and confirmed subject to this part and any terms, conditions, and limitations placed on a change in appropriation authorization by the department.

History: En. Sec. 27, Ch. 452, L. 1973; R.C.M. 1947, 89-891; amd. Sec. 33, Ch. 697, L. 1979; amd. Sec. 17, Ch. 497, L. 1997; amd. Sec. 17, Ch. 213, L. 2007; amd. Sec. 6, Ch. 251, L. 2009; amd. Sec. 5, Ch. 244, L. 2023.

Cross-References

Existing rights to use of waters for any useful or beneficial purpose recognized and confirmed, Art. IX, sec. 3, Mont. Const.

Action for damage to water supply caused by metal mine, 82-4-355.

Declaration of policy and purpose, 85-2-101.

Final decree, 85-2-234.

85-2-402. Changes in appropriation rights — definition. (1) (a) The right to make a change in appropriation right subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change in appropriation right proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and 85-2-429, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(b) If an application involves a change in a point of diversion, conveyance, or place of use located on national forest system lands, the application is not correct and complete until the applicant has submitted proof to the department of any written special use authorization required by federal law for the proposed change in occupancy, use, or traverse of national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

(c) The applicant is not required to prove a lack of adverse effect for any water right identified on a written consent to approval filed pursuant to subsection (16) in connection with an application.

(2) Except as provided in subsections (4) through (6) and, if applicable, subject to subsections (1)(c) and (15), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3. For purposes of this section, adverse effects analysis is specific to the proposed change in appropriation right and a determination that water is not legally available pursuant to 85-2-311 does not necessarily mean that an adverse effect will occur.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate, except for:

(i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

(ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

(iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water. This subsection (2)(d) does not apply to:

(i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

(ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

(iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change in appropriation right is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing legal demands of water rights on the state water supply, as well as projected legal demands of water rights for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the existing legal demands of water rights placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in appropriation right in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change in appropriation right. The department shall provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change in appropriation right might adversely affect the rights of other persons, except for any water right for which a written consent to approval has been filed pursuant to subsection (16) in connection with the application.

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change in appropriation right. The department may extend time limits specified in the change in appropriation right approval under the applicable criteria and procedures of 85-2-312.

(9) (a) On actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed. The department shall review the certified statement and may inspect the appropriation to verify whether the appropriation was completed in substantial accordance with the terms of the change in appropriation right.

(b) For a change in appropriation right of an existing water right granted prior to issuance of a final decree in the basin where the existing water right is located, the department shall verify that the elements and conditions of the change in appropriation right are in substantial accordance with the elements of the existing water right as adjudicated in the final decree. If the notice of completion of the change in appropriation of an existing water right was verified prior to issuance of a final decree in the basin where the existing water right is located, the department shall verify that the elements and conditions of the change in appropriation right are in substantial accordance with the elements of the existing water right as adjudicated in the final decree. The department verification is subject to any modifications to the final decree based on an appeal under 85-2-235.

(c) For a change in appropriation right on a provisional permit granted before issuance of a final decree in the basin where the provisional permit is located, the department shall verify that the elements and conditions of the change in appropriation right are in substantial accordance with any modification or reduction of the provisional permit pursuant to 85-2-313. If the notice of completion for a change in appropriation right was verified by the department prior to an order reducing or modifying the provisional permit pursuant to 85-2-313, the department shall verify that the elements and conditions of the change in appropriation right are in substantial accordance with the reduction or modification of the provisional permit.

(10) If a change in appropriation right is not completed as approved by the department or legislature, if the terms, conditions, restrictions, and limitations of the change in appropriation right approval are not complied with, or if the elements of the change in appropriation right are not in substantial accordance with the elements of the existing water right in the final decree or with the reduction or modification of the provisional permit pursuant to 85-2-313, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change in appropriation right approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change in appropriation right approval.

(11) The original of a change in appropriation right approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change in appropriation right approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change in appropriation right pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) The department shall accept and process an application for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows pursuant to 85-2-320 and this section and to benefit the fishery resource pursuant to 85-2-436 and this section.

(16) The department may not conduct an adverse effects analysis on a water right if the water right holder files a written consent to approval of an application for a change in appropriation right.

History: **En. Sec. 28, Ch. 452, L. 1973; amd. Sec. 3, Ch. 238, L. 1974; amd. Sec. 1, Ch. 338, L. 1975; amd. Sec. 8, Ch. 416, L. 1977; R.C.M. 1947, 89-892; amd. Sec. 15, Ch. 448, L. 1983; amd. Sec. 7, Ch. 573, L. 1985; amd. Sec. 8, Ch. 535, L. 1987; amd. Sec. 3, Ch. 432, L. 1989; amd. Sec. 2, Ch. 658, L. 1989; amd. Sec. 3, Ch. 308, L. 1991; amd. Sec. 9, Ch. 805, L. 1991; amd. Sec. 7, Ch. 370, L. 1993; amd. Sec. 3, Ch. 460, L. 1993; (14)En. Sec. 5, Ch. 460, L. 1993; amd. Sec. 2, Ch. 322, L. 1995; amd. Sec. 7, Ch. 487, L. 1995; amd. Sec. 3, Ch. 353, L. 1997; amd. Sec. 18,**

Ch. 497, L. 1997; amd. Sec. 1, Ch. 42, L. 1999; amd. Sec. 1, Ch. 132, L. 2001; amd. Sec. 3, Ch. 381, L. 2001; amd. Sec. 1, Ch. 161, L. 2003; amd. Sec. 3, Ch. 85, L. 2005; amd. Sec. 18, Ch. 213, L. 2007; amd. Sec. 3, Ch. 448, L. 2007; amd. Sec. 2, Ch. 86, L. 2009; amd. Sec. 1, Ch. 424, L. 2009; amd. Sec. 4, Ch. 29, L. 2011; amd. Sec. 11, Ch. 335, L. 2013; amd. Sec. 2, Ch. 192, L. 2015; amd. Sec. 5, Ch. 243, L. 2017; amd. Sec. 1, Ch. 78, L. 2019; amd. Sec. 2, Ch. 317, L. 2021; amd. Sec. 4, Ch. 171, L. 2025; amd. Sec. 3, Ch. 453, L. 2025; amd. Sec. 4, Ch. 679, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 4, Ch. 171, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 3, Ch. 453, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 4, Ch. 679, L. 2025. Amendment effective October 1, 2025.

Cross-References

Due process, Art. II, sec. 17, Mont. Const.
Measurement of water, 85-2-103.
Penalties, 85-2-122.
Definitions, 85-2-602.

85-2-403. Transfer of appropriation right. (1) The right to use water shall pass with a conveyance of the land or transfer by operation of law, unless specifically exempted therefrom. All transfers of interests in appropriation rights shall be without loss of priority.

(2) Failure to comply with the provisions of 85-2-402 does not render a conveyance or reservation of a water right void, but the right may not be used until the department has approved the change. This subsection applies retroactively, within the meaning of 1-2-109, to a conveyance or reservation made after July 1, 1973.

History: En. Sec. 29, Ch. 452, L. 1973; amd. Sec. 4, Ch. 238, L. 1974; R.C.M. 1947, 89-893; amd. Sec. 16, Ch. 448, L. 1983; amd. Sec. 7, Ch. 674, L. 1983; amd. Sec. 9, Ch. 535, L. 1987.

Cross-References

Transfer of real property, Title 70, ch. 20.
Department duties, 85-2-112.
Penalties, 85-2-122.

85-2-404. Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of an appropriation right with the intention of wholly or partially abandoning the right or if the appropriator ceases using the appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right is, to that extent, considered abandoned and must immediately expire.

(2) If an appropriator ceases to use all or part of an appropriation right or ceases using the appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the appropriator has abandoned the right for the part not used.

(3) If an appropriator ceases to use all or part of an appropriation right in compliance with a candidate conservation agreement initiated pursuant to 50 CFR 17.32 or because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) (a) If an appropriator ceases to use all or part of an appropriation right during a drought, the reduction in use or the nonuse of the appropriation right does not by itself represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the appropriation right if:

(i) the place of diversion or use is within a county experiencing D1 moderate drought or worse, as designated by the United States drought monitor; and

(ii) the reduction in use or the nonuse is made in compliance with a local, regional, or state drought plan filed with the department that identifies a metric or criterion that compels the voluntary reduction or cessation of water diversions in a geographic area or for water rights included in the drought plan.

(b) The owner of a water right who reduces or ceases all or part of the use of the water right in accordance with this subsection (4) shall file a report on a form prescribed by the department by December 30 of the year in which the water right use was reduced or ceased.

(5) The lease of an existing right pursuant to 85-2-436, a temporary change in appropriation right pursuant to 85-2-407 or 85-2-408, or a temporary lease of an appropriation right pursuant to 85-2-428 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(6) Subsections (1) and (2) do not apply to existing rights until they have been finally determined in accordance with part 2 of this chapter.

History: En. Sec. 30, Ch. 452, L. 1973; R.C.M. 1947, 89-894; amd. Sec. 1, Ch. 339, L. 1987; amd. Sec. 3, Ch. 658, L. 1989; amd. Sec. 2, Ch. 435, L. 1991; amd. Sec. 8, Ch. 487, L. 1995; amd. Sec. 5, Ch. 174, L. 1997; amd. Sec. 4, Ch. 85, L. 2005; amd. Sec. 1, Ch. 355, L. 2007; amd. Sec. 3, Ch. 347, L. 2025; amd. Sec. 1, Ch. 497, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 3, Ch. 347, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 497, L. 2025. Amendment effective October 1, 2025.

Cross-References

Abandonment by failure to file claim, 85-2-226.
Final decree in adjudication program, 85-2-234.
Temporary lease of appropriation right — notice, 85-2-428.

85-2-405. Procedure for declaring appropriation rights abandoned. (1) When the department has reason to believe that an appropriator may have abandoned an appropriation right under 85-2-404 or when another appropriator in the opinion of the department files a valid claim that the appropriator has been or will be injured by the resumption of use of an appropriation right alleged to have been abandoned, the department shall petition the district court that determined the existing rights in the source of the appropriation in question to hold a hearing to determine whether the appropriation right has been abandoned. Proceedings under this section must be conducted in accordance with the Montana Rules of Civil Procedure, and appeal must be taken in accordance with the Montana Rules of Appellate Procedure.

(2) At the hearing, the burden of proof is on the department, which shall establish by a preponderance of the evidence that the appropriation has been abandoned under 85-2-404.

(3) The determination of the court must be appended to the final decree. The department shall keep a copy of the determination in its office in Helena.

History: En. Sec. 31, Ch. 452, L. 1973; R.C.M. 1947, 89-895; amd. Sec. 2761, Ch. 56, L. 2009.

Cross-References

Final decree, 85-2-234.

85-2-406. District court supervision of water distribution. (1) The district courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to July 1, 1973. The supervision must be governed by the principle that first in time is first in right.

(2) (a) A district court may order the distribution of water pursuant to a district court decree entered prior to July 1, 1973, until an enforceable decree is entered under part 2 of this chapter or the matter has been adjudicated under the procedure set forth in subsection (2)(b).

(b) When a water distribution controversy arises upon a source of water in which not all existing rights have been conclusively determined according to part 2 of this chapter, any party to the controversy may petition the district court to certify the matter to the chief water judge. If a certification request is made, the district court shall certify to the chief water judge the determination of the existing rights that are involved in the controversy according to part 2 of this chapter. The district court from which relief is sought shall retain exclusive jurisdiction to grant injunctive or other relief that is necessary and appropriate pending adjudication of the existing water rights certified to the water judge. Certified controversies must be given priority over all other adjudication matters. After determination of the matters certified, the water judge shall return the decision to the district court with a tabulation or list of the existing rights and their relative priorities.

(3) A controversy between appropriators from a source that has been the subject of a final decree under part 2 of this chapter must be settled by the district court. The order of the district court settling the controversy may not alter the existing rights and priorities established in

the final decree except to the extent the court alters rights based upon abandonment, waste, or illegal enlargement or change of right. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy must be appended to the final decree, and a copy must be filed with the department. The department must be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding.

(4) A temporary preliminary decree or preliminary decree or a portion of a temporary preliminary decree or preliminary decree as modified after objections and hearings is enforceable and administrable according to its terms. If an action to enforce a temporary preliminary decree or preliminary decree is commenced, the water judge shall upon referral from the district court establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all existing rights and their relative priorities.

(5) A person whose existing rights and priorities are determined in a temporary preliminary decree or preliminary decree or a person exercising a suspension under 85-2-217 and part 7 of this chapter may appeal a determination made pursuant to subsection (2).

History: En. Sec. 32, Ch. 452, L. 1973; amd. Sec. 12, Ch. 485, L. 1975; R.C.M. 1947, 89-896; amd. Sec. 34, Ch. 697, L. 1979; amd. Sec. 6, Ch. 604, L. 1989; amd. Sec. 6, Ch. 174, L. 1997.

Cross-References

Water Courts, Title 3, ch. 7.
Final decree, 85-2-234.
Appeals from final decree, 85-2-235.
Water Commissioners — power and duty to distribute water, 85-5-105.

85-2-407. Temporary changes in appropriation right. (1) Except as provided in 85-2-410, an appropriator may not make a temporary change in appropriation right for the appropriator's use or another's use except with department approval in accordance with 85-2-402, 85-2-429, and this section.

(2) Except as provided in subsection (9), a temporary change in appropriation right may be approved for a period not to exceed 10 years. A temporary change in appropriation right may be approved for consecutive or intermittent use.

(3) An authorization for a temporary change in appropriation right may be renewed by the department for a period not to exceed 10 years. There is no limitation on the number of renewals the appropriator may seek. Renewal of an authorization for a temporary change in appropriation right requires notice to the department by the appropriator. Upon receipt of the notice, the department shall notify other appropriators potentially affected by the renewal and shall allow 90 days for submission of new evidence of adverse effects to other water rights. A temporary change authorization may not be renewed by the department if it determines that the right of an appropriator is adversely affected, except for an appropriator described in subsection (7) or a water right identified in a written consent to approval filed pursuant to 85-2-402 in connection with a temporary change.

(4) (a) During the term of the original temporary change authorization, the department may modify or revoke its authorization for a temporary change if it determines that the right of an appropriator is adversely affected, except for an appropriator described in subsection (7) or a water right identified in a written consent to approval filed pursuant to 85-2-402 in connection with a temporary change.

(b) An appropriator, other than an appropriator identified in subsection (7), may object:

(i) during the initial temporary change application process;

(ii) during the temporary change renewal process; and

(iii) once during the term of the temporary change permit.

(5) The priority of appropriation for a temporary change in appropriation right is the same as the priority of appropriation of the right that is temporarily changed.

(6) Neither a change in appropriation right nor any other authorization right is required for reversion of the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the period for which a temporary change was authorized expires.

(7) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a temporary change in appropriation right under this section

may not object to the exercise of the temporary change according to its terms, the renewal of the authorization for the temporary change, or the reversion of the appropriation right to its permanent purpose, place of use, point of diversion, or place of storage. Persons described in this subsection must be notified of the existence of any temporary change authorizations from the same source of supply.

(8) If a water right for which a temporary change in appropriation right has been approved is transferred as an appurtenance of real property, the temporary change remains in effect unless another change in appropriation right is authorized by the department.

(9) If the quantity of water that is subject to a temporary change in appropriation right is made available from the development of a new water conservation or storage project, a temporary change in appropriation right may be approved for a period not to exceed 30 years unless a renewal is obtained pursuant to subsection (3).

History: En. Sec. 1, Ch. 435, L. 1991; amd. Sec. 3, Ch. 322, L. 1995; amd. Sec. 4, Ch. 381, L. 2001; amd. Sec. 1, Ch. 433, L. 2001; amd. Sec. 1, Ch. 122, L. 2003; amd. Sec. 5, Ch. 85, L. 2005; amd. Sec. 6, Ch. 243, L. 2017; amd. Sec. 5, Ch. 171, L. 2025; amd. Sec. 5, Ch. 679, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 5, Ch. 171, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 5, Ch. 679, L. 2025. Amendment effective October 1, 2025.

Cross-References

Abandonment of appropriation right, 85-2-404.

85-2-408. Temporary change authorization for instream flow — additional requirements. (1) The department shall accept and process an application for a temporary change in appropriation rights to maintain or enhance instream flow to benefit the fishery resource under the provisions of 85-2-402, 85-2-407, and this section. The application must:

(a) include specific information on the length and location of the stream reach in which the streamflow is to be maintained or enhanced; and

(b) provide a detailed streamflow measuring plan that describes the point where and the manner in which the streamflow must be measured.

(2) (a) A temporary change authorization under the provisions of this section is allowable only if the owner of the water right voluntarily agrees to:

(i) change the purpose of a consumptive use water right to instream flow for the benefit of the fishery resource; or

(ii) lease a consumptive use water right to another person for instream flow to benefit the fishery resource.

(b) For the purpose of this subsection (2), "person" means and is limited to an individual, association, partnership, or corporation.

(3) In addition to the requirements of 85-2-402 and 85-2-407, an applicant for a change authorization under this section shall prove by a preponderance of evidence that:

(a) the temporary change authorization for water to maintain and enhance instream flow to benefit the fishery resource, as measured at a specific point, will not adversely affect the water rights of other persons; and

(b) the amount of water for the proposed use is needed to maintain or enhance instream flows to benefit the fishery resource.

(4) The applicant is not required to prove a lack of adverse effect for any water right identified in a written consent to approval filed pursuant to 85-2-402 in connection with a change application.

(5) The department shall approve the method of measurement of the water to maintain and enhance instream flow to benefit the fishery resource through a temporary change authorization as provided in this section.

(6) Only the owner of the water right may seek enforcement of the temporary change authorization or object under 85-2-308.

(7) A temporary change authorization under this section does not create a right of access across private property or allow any infringement of private property rights.

(8) The maximum quantity of water that may be changed to maintain and enhance streamflows to benefit the fishery resource is the amount historically diverted. However, only the amount historically consumed, or a smaller amount if specified by the department in the

lease authorization, may be used to maintain or enhance streamflows to benefit the fishery resource below the existing point of diversion.

History: **En. Sec. 1, Ch. 322, L. 1995; amd. Sec. 6, Ch. 85, L. 2005; amd. Sec. 7, Ch. 243, L. 2017; amd. Sec. 6, Ch. 171, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 171, L. 2025. Amendment effective October 1, 2025.

85-2-409. Repealed. Sec. 9, Ch. 85, L. 2005.

History: **En. Sec. 4, Ch. 322, L. 1995.**

85-2-410. Short-term lease of appropriation right. (1) An appropriator may lease for a term not to exceed 90 days all or part of an appropriation right for road construction or dust abatement without the prior approval of the department, subject to the requirements of this section. The lease agreement must include the following information:

(a) the name and address of the lessee;
(b) the name of the owner of the appropriation right;
(c) the number of the appropriation right;
(d) the purpose of use of water for which the lease is being made;
(e) the source of water to be appropriated;
(f) the starting and ending date of the proposed use of water;
(g) the proposed point of diversion;
(h) the proposed place of use;
(i) the diversion flow rate and volume of water to be used during the period of use; and
(j) a description of how the existing use of water will be reduced to accommodate the temporary change of use of the appropriation right, including the number and location of acres to be removed from irrigation, if applicable.

(2) A short-term lease of an appropriation right under this section may not exceed 60,000 gallons a day or the amount of the appropriation right, whichever is less. Any combination of short-term leases cannot exceed 120,000 gallons a day for one project.

(3) Except as provided in subsection (9), the following information must be submitted to the department at least 2 days prior to the use of water by a lessee under this section:

(a) a copy of the publication notice or copies of the individual notice required under subsection (4);

(b) a copy of the lease agreement; and

(c) for a combination of short-term leases greater than 60,000 gallons a day for one project, an analysis by the lessee of any potential adverse effects and a description of planned actions to mitigate any potential adverse effects to appropriators in the area of the proposed point of diversion.

(4) Except as provided in subsection (9), the lessee of an appropriation right under this section shall, 30 days prior to the use of the water, publish a notice of the proposed use of water once in a newspaper of general circulation in the area of the diversion or mail individual notice to potentially affected appropriators in the area of the proposed point of diversion. The published notice or the individual notice must contain the information listed in subsections (1)(a) through (1)(j) and (3)(c).

(5) (a) The owner of a water right, whether the right is prior or subsequent in priority to the short-term lease acquired by a person under this section, who cannot satisfy in full the owner's right during the time that the short-term lessee is diverting water may make a complaint to the department and cause the short-term lessee's diversion to be discontinued.

(b) The diversion is discontinued until the owner's right is satisfied or until the lessee establishes to the department that the discontinuance has had no effect on the owner's water right. Upon establishment that discontinuance has not had an effect, the department shall enter an order allowing the diversion to continue.

(6) If a person purposely, with malicious intent, causes the discontinuance of a short-term diversion through the complaint process provided in subsection (5)(a) and the complaint is found to be invalid and frivolous, the person is, upon conviction, guilty of a misdemeanor and shall be fined in an amount not to exceed $500.

(7) This section does not limit the remedies available to an appropriator to enjoin or to seek damages from a person appropriating water under this section.

(8) A civil action instituted to enjoin or seek damages from a person appropriating water pursuant to this section must be commenced against the lessee. The lessor is not a necessary party to a civil action. The lessee has the burden of establishing that the lessee's use does not have an adverse effect on a prior appropriator of water.

(9) (a) A local government entity, as defined in 7-6-602, is not subject to the requirements of subsections (3)(a) and (4) when conducting dust abatement that was not scheduled or contracted for 30 days or more prior to the use of the water.

(b) A local government entity that does not publish notice as provided in subsection (4) shall post a copy of the lease agreement at the point of diversion at least 24 hours prior to and during the time that water is diverted.

History: En. Sec. 1, Ch. 381, L. 2001; amd. Sec. 1, Ch. 49, L. 2003.

85-2-411. Water turned into natural channels. Water appropriated under an existing right or pursuant to this chapter may be turned into the natural channel of another stream or from a reservoir into the natural channel and withdrawn or diverted at a point downstream for beneficial use, but the waters of that stream may not thereby be diminished in quantity or deteriorated in quality to the detriment of a prior appropriator. Water stored in a reservoir under an existing right or pursuant to this chapter which is turned into a natural channel for withdrawal or diversion and beneficial use downstream shall not be considered a part of the natural flow of that stream.

History: En. 89-891.1 by Sec. 1, Ch. 103, L. 1974; R.C.M. 1947, 89-891.1.

Cross-References

Water quality, Title 75, ch. 5.

The Natural Streambed and Land Preservation Act of 1975, Title 75, ch. 7, part 1.

85-2-412. Return of surplus water to stream. If, by virtue of prior appropriation, a person has diverted all the water of any stream or to an extent that there may not be an amount sufficient left for those having a subsequent right to the waters of the stream and there is, at any time, a surplus of water so diverted, over and above what is actually and necessarily used by the prior appropriator, the prior appropriator must be required to turn and cause to flow back into the stream the surplus water. Upon failure to do so within 24 hours after demand being made upon the prior appropriator in writing, to the prior appropriator in person or at the prior appropriator's place of residence, by any person having a right to the use of the surplus water, the person diverting the water is liable to the person aggrieved for the damage resulting from the diversion in a sum determined by court.

History: En. Sec. 1, p. 52, L. 1879; re-en. Sec. 731, p. 562, 5th Div. Rev. Stat. 1879; re-en. Sec. 1239, 5th Div. Comp. Stat. 1887; amd. Sec. 1884, Civ. C. 1895; re-en. Sec. 1, Ch. 56, L. 1907; Sec. 4844, Rev. C. 1907; re-en. Sec. 7097, R.C.M. 1921; re-en. Sec. 7097, R.C.M. 1935; R.C.M. 1947, 89-805; amd. Sec. 2762, Ch. 56, L. 2009.

Cross-References

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

Prevention of waste, 85-2-114.

85-2-413. Diversion of natural flow of waters — when permitted. A person who owns or is in possession of lands susceptible of irrigation from any stream, the waters of which are so diminished by prior appropriations that a sufficient amount of water for the irrigation of the person's lands cannot be obtained from the natural flow of the stream, and who constructs a reservoir or purchases or leases water from a reservoir owned by the department or another or otherwise acquires an interest in the reservoir or in water stored in the reservoir, which is located so that because of natural or other obstacles the water impounded in the reservoir cannot be conducted to the lands that the person desires to irrigate, may, if the stored water can be discharged into the stream in a manner that it can be used beneficially by prior appropriators, divert the natural flow of the stream for the irrigation of the person's lands in lieu of an equal amount of stored water. However, an exchange of water under this section must be made without injury to prior appropriators.

History: En. Sec. 1, Ch. 39, L. 1937; amd. Sec. 155, Ch. 253, L. 1974; R.C.M. 1947, 89-806; amd. Sec. 2763, Ch. 56, L. 2009.

Cross-References

Creation of irrigation districts — adjudicated streams, Title 85, ch. 7, part 2.
Creation of irrigation districts — common water supply, Title 85, ch. 7, part 3.
Stream protection, Title 87, ch. 5, part 5.

85-2-414. Conduction of water. The right to conduct water from or over the land of another for any beneficial use includes the right to raise any water by means of dams, reservoirs, or embankments to a sufficient height to make the same available for the use intended, and the right to any and all land necessary therefor may be acquired upon payment of just compensation in the manner provided by law for the taking of private property for public use. If it is necessary to conduct the water across the right-of-way of any railroad, it shall be the duty of the owners of the ditch or flume to give 30 days' notice in writing to the owner or owners of such railway of their intention to construct a ditch or flume across the right-of-way of such railroad, the point at which the ditch or flume will cross the railroad, and the time when the construction of said ditch or flume will be made. If the owner or owners of such railroad or their agent fail to appear and attend at the time and place fixed in said notice, it shall be lawful for the owner or owners of the said flume or ditch to construct the same across the right-of-way of such railroad without further notice to said owner or owners of the railroad.

History: En. Sec. 1894, Civ. C. 1895; re-en. Sec. 4857, Rev. C. 1907; re-en. Sec. 7110, R.C.M. 1921; re-en. Sec. 7110, R.C.M. 1935; R.C.M. 1947, 89-820.

Cross-References

Eminent domain — assessing compensation, 70-30-302.
Construction across streams, highways, or other obstacles, 85-1-208.

85-2-415. Owners of water to sell surplus. Any person having the right to use, sell, or dispose of water and engage in using, selling, or disposing of the same who has a surplus of water not used or sold or any person having a surplus of water and the right to sell and dispose of the same is required, upon the payment or tender to the person entitled thereto of an amount equal to the usual and customary rates per inch or cubic foot of water per second, to convey and deliver to the person the surplus of unsold water or so much thereof for which the payment or tender has been made and shall continue to convey and deliver the same weekly so long as the surplus of unused or unsold water exists and the payment or tender is made as aforesaid.

History: En. Sec. 1, p. 406, L. 1877; re-en. Sec. 742, 5th Div. Rev. Stat. 1879; re-en. Sec. 1263, 5th Div. Comp. Stat. 1887; re-en. Sec. 1897, Civ. C. 1895; re-en. Sec. 4860, Rev. C. 1907; re-en. Sec. 7113, R.C.M. 1921; re-en. Sec. 7113, R.C.M. 1935; amd. Sec. 6, Ch. 460, L. 1977; R.C.M. 1947, 89-823.

Cross-References

Measurement of water, 85-2-103.
Prevention of waste, 85-2-114.

85-2-416. Duty of purchaser to dig ditches. A person desiring to purchase surplus water pursuant to 85-2-415 shall, at the person's own cost and expense, construct or dig the necessary flumes or ditches to receive and convey the surplus water desired by the person and pay or tender to the person having the right to the use, sale, or disposal of that water an amount equal to the necessary cost and expense of tapping any gulch, stream, reservoir, ditch, flume, or aqueduct and putting in gates, gauges, or other proper and necessary appliances usual and customary, and until that work is done, the delivery of the surplus water may not be required as provided in 85-2-415.

History: En. Sec. 2, p. 406, L. 1877; re-en. Sec. 743, 5th Div. Rev. Stat. 1879; re-en. Sec. 1264, 5th Div. Comp. Stat. 1887; re-en. Sec. 1898, Civ. C. 1895; re-en. Sec. 4861, Rev. C. 1907; re-en. Sec. 7114, R.C.M. 1921; re-en. Sec. 7114, R.C.M. 1935; R.C.M. 1947, 89-824; amd. Sec. 2764, Ch. 56, L. 2009.

85-2-417. Enforcement of right to surplus. Any person constructing the necessary ditches, aqueducts, or flumes and making the payments or tenders hereinbefore provided is entitled to the use of so much of the surplus water as said ditches, flumes, or aqueducts have the capacity to carry and for which payment or tender is made and may institute and maintain any appropriate action at law or in equity for the enforcement of such right or recovery of damages arising from a failure to deliver or wrongful diversion of the same.

History: En. Sec. 3, p. 406, L. 1877; re-en. Sec. 744, 5th Div. Rev. Stat. 1879; re-en. Sec. 1265, 5th Div. Comp. Stat. 1887; re-en. Sec. 1899, Civ. C. 1895; re-en. Sec. 4862, Rev. C. 1907; re-en. Sec. 7115, R.C.M. 1921; re-en. Sec. 7115, R.C.M. 1935; R.C.M. 1947, 89-825.

Cross-References

Damages, Title 27, ch. 1, part 2.
Specific and preventive relief, Title 27, ch. 1, part 4.

85-2-418. Purchaser not to sell surplus water. Sections 85-2-415 through 85-2-417 may not be construed to give the person acquiring the right to the use of water, as provided in those sections, the right to sell or dispose of the water after being used by the person or to prevent the original owner or proprietor from retaking, selling, and disposing of the water in the usual and customary manner after it is used as provided in those sections.

History: En. Sec. 4, p. 407, L. 1877; re-en. Sec. 745, 5th Div. Rev. Stat. 1879; re-en. Sec. 1266, 5th Div. Comp. Stat. 1887; re-en. Sec. 1900, Civ. C. 1895; re-en. Sec. 4863, Rev. C. 1907; re-en. Sec. 7116, R.C.M. 1921; re-en. Sec. 7116, R.C.M. 1935; R.C.M. 1947, 89-826; amd. Sec. 2765, Ch. 56, L. 2009.

85-2-419. Salvaged water. It is the declared policy of the state in 85-1-101 to encourage the conservation and full use of water. Consistent with this policy, holders of appropriation rights who salvage water may retain the right to the salvaged water for beneficial use. Except for a short-term lease pursuant to 85-2-410, any use of the right to salvaged water for any purpose or in any place other than that associated with the original appropriation right must be approved by the department as a change in appropriation right in accordance with 85-2-402 and 85-2-436, if applicable. Sale of the right to salvaged water must also be in accordance with 85-2-403, and the lease of the right to salvaged water must be in accordance with 85-2-408, 85-2-410, or 85-2-436.

History: En. Sec. 1, Ch. 308, L. 1991; amd. Sec. 1, Ch. 123, L. 1999; amd. Sec. 5, Ch. 381, L. 2001; amd. Sec. 7, Ch. 85, L. 2005; amd. Sec. 4, Ch. 448, L. 2007.

85-2-420. Change in appropriation right for aquifer recharge or mitigation — marketing. (1) Subject to 85-2-402 and this section, an appropriator may apply for a change in appropriation right for the purpose of aquifer recharge or mitigation or for the purpose of marketing water for aquifer recharge or mitigation.

(2) During the completion period authorized by the department for a change pursuant to this section, the appropriator may continue to use the appropriation right for any authorized beneficial use provided that proportionate amounts of the appropriation right are retired as the mitigation or aquifer recharge beneficial use is perfected.

(3) (a) If the full amount of the appropriation right is not sold or marketed as mitigation or aquifer recharge prior to the completion date, the water right retains the beneficial uses authorized prior to the change approved pursuant to this section.

(b) For an appropriation right that retains the original beneficial uses pursuant to this section, if the water retained for the original beneficial uses and the amount sold or marketed for mitigation or aquifer recharge are:

(i) not diverted at a common point of diversion, the flow rate and volume of water retained at the point of diversion for the original beneficial uses must be equal to the flow rate and volume allowed under the original beneficial uses minus the amount sold or marketed for mitigation or aquifer recharge; or

(ii) diverted at a common point of diversion, the entire flow rate and volume of the appropriation is allowed from the common point of diversion.

(4) As part of a change in appropriation right approved pursuant to this section, the department shall:

(a) determine a period for the change in appropriation right to be completed that does not exceed 20 years;

(b) determine an appropriate location for measuring the amount of water that will be used for mitigation or aquifer recharge and, if necessary, require installation of a measuring device; and

(c) require the appropriator to notify the department within 30 days each time a portion of the change is completed.

History: En. Sec. 1, Ch. 29, L. 2011; amd. Sec. 1, Ch. 222, L. 2019.

85-2-421. Purpose. The purpose of 85-2-421 through 85-2-424 and 85-2-426 is to facilitate the maintenance of a reliable record of water right ownership.

History: En. Sec. 1, Ch. 674, L. 1983; amd. Sec. 1, Ch. 271, L. 1985; amd. Sec. 146, Ch. 370, L. 1987; amd. Sec. 10, Ch. 70, L. 2005; amd. Sec. 2, Ch. 366, L. 2007.

Cross-References

Transfer of appropriation right, 85-2-403.

85-2-422. Repealed. Sec. 5, Ch. 59, L. 2019.

History: En. Sec. 2, Ch. 674, L. 1983; amd. Sec. 147, Ch. 370, L. 1987; amd. Sec. 3, Ch. 366, L. 2007.

85-2-423. Water right ownership update form. The chief water judge and the department shall prescribe the form and content of the water right ownership update form.

History: En. Sec. 3, Ch. 674, L. 1983; amd. Sec. 11, Ch. 70, L. 2005.

85-2-424. Filing. (1) Except in the case of a transfer of real property served by a public service water supply, when a person presents for recording a deed or other instrument evidencing a transfer of real property, the realty transfer certificate must contain a water rights disclosure in which the transferor shall acknowledge, at or before closing or transfer of real property, whether or not any water rights are associated with the property to be transferred and whether or not any water rights will transfer with the real property.

(2) (a) The department shall update its records to reflect the new ownership of a water right within 30 days after receipt of either:

(i) information received from the department of revenue, if:

(A) the transferor of the property is the same as the owner of record for the water right;

(B) the transferor conveys the entirety of the property associated with the place of use; and

(C) the department has not received a form pursuant to subsection (3), (4), or (5); or

(ii) a complete water right ownership update form provided by the department and submitted to the department.

(b) If the department receives information from the department of revenue that a transfer has occurred and the transferor of the property is not the same as the owner of record for the water rights, the department shall within 30 days after receipt of the information from the department of revenue notify each party indicated as a transferee that:

(i) the party is required to submit a complete water right ownership update form and the required fee within 60 days after the notice; and

(ii) ownership of the water right will not be changed in the department's records until the complete water right ownership update form is provided.

(c) The appropriate fee must be paid at closing or upon completion of the transfer of real property as provided in 85-2-426.

(d) The transferee of a water right, after receiving notice as provided in subsection (2)(e), is responsible for compliance with this section.

(e) If the department receives notice from the department of revenue that a property transfer has occurred and the proper fee was not received by the department, the department shall send a notice to the transferee requesting payment of the fee. If the transferee does not pay the fee within 60 days, the department may assess a penalty against the transferee pursuant to 85-2-431.

(3) (a) Except as provided in subsection (3)(b), if the realty transfer certificate discloses the division of the place of use of a water right among separate parcels, each transferee receiving a portion of the water right shall file with the department a complete water right ownership update form confirming the transfer, a map, and the required fee.

(b) If a complete water right ownership update form is not filed by all parties pursuant to subsection (3)(a), the parties must be reflected as co-owners on the water right.

(4) If a person exempts a water right pursuant to 85-2-403, the person shall file with the department a complete form provided by the department describing the exempting of the water right and the appropriate fee.

(5) If a person severs a water right from appurtenant property without conveying the property, the person shall file with the department a complete form provided by the department describing the severance and the appropriate fee.

(6) If the realty transfer certificate submitted with a deed or other instrument indicates that a water right is being transferred, severed, divided, or exempted, the clerk and recorder may not record the deed or instrument unless there is submitted with the deed or instrument a certification under penalty of false swearing, on a form provided by the department and signed by the transferor and transferee, that states either:

(a) that the documents and fee necessary to comply with this section are held in escrow, in which case the certification must also be signed by the escrow agent; or

(b) if there is no escrow, that the transferor and transferee certify that they have filed or mailed the required documents and fee with or to the department.

(7) Any written agreement to transfer land that has appurtenant water rights on record with the department must contain the following disclosure or words of a similar nature:

"WATER RIGHT OWNERSHIP UPDATE DISCLOSURE:

By Montana law, failure of the parties at closing or transfer of real property to pay the required fee to the Montana Department of Natural Resources and Conservation for updating water right ownership may result in the transferee of the property being subject to a penalty. Additionally, in the case of water rights being exempted, severed, or divided, the failure of the parties to comply with section 85-2-424, MCA, could result in a penalty against the transferee and rejection of the deed for recording."

(8) Except as provided in subsection (2), the department shall update its records to reflect new ownership without collection of a transfer fee within 30 days after:

(a) receiving a withdrawal of a water right, or an interest in a water right, by an owner of the right or interest;

(b) receiving an order from the water court or other court of competent jurisdiction that modifies or terminates ownership of a water right; or

(c) learning of a clerical error resulting from an error on a water right ownership update form.

(9) In the event of a dispute over the ownership of a water right, the department shall, within 30 days after being notified of the dispute, certify the matter to the water court or other court of competent jurisdiction for resolution.

(10) The department may not delay updating ownership based on nonpayment of transfer fees by a transferee. The department's sole remedy in the event of nonpayment of transfer fees is to assess a penalty and seek collection from the transferee pursuant to 85-2-431.

(11) For the purposes of this section, "complete" means that the information requested in the form has been supplied, together with a copy of the executed deed or deeds or any other instruments confirming the transferee's ownership or the ownership by the person exempting the water right, for each water right listed on the form. The department shall notify the transferee or the person exempting the water right of any deficiencies causing the form to be considered not complete within 60 days of submission.

History: En. Sec. 4, Ch. 674, L. 1983; amd. Sec. 2, Ch. 271, L. 1985; amd. Sec. 10, Ch. 805, L. 1991; amd. Sec. 3, Ch. 167, L. 1997; amd. Sec. 12, Ch. 70, L. 2005; amd. Sec. 4, Ch. 366, L. 2007; amd. Sec. 12, Ch. 335, L. 2013; amd. Sec. 1, Ch. 70, L. 2017; amd. Sec. 1, Ch. 260, L. 2021.

85-2-425. Repealed. Sec. 6, Ch. 271, L. 1985.

History: En. Sec. 5, Ch. 674, L. 1983.

85-2-426. Fee. (1) The department shall by rule prescribe a fee that may not be higher than necessary to cover the cost to the department of updating its water right ownership records. A fee must be paid:

(a) at closing when the realty transfer certificate discloses the transfer of a water right; or

(b) at the time of filing of the water right ownership update form or the form describing the severance or exempting of the water right.

(2) The fee must be deposited in the water right appropriation account provided for in 85-2-318.

History: En. Sec. 6, Ch. 674, L. 1983; amd. Sec. 3, Ch. 271, L. 1985; amd. Sec. 456, Ch. 418, L. 1995; amd. Sec. 13, Ch. 70, L. 2005; amd. Sec. 5, Ch. 366, L. 2007.

85-2-427. Terminated. Sec. 4, Ch. 236, L. 2013.

History: En. Sec. 1, Ch. 236, L. 2013; amd. Sec. 9, Ch. 294, L. 2015.

85-2-428. Temporary lease of appropriation right — notice. (1) Applications to temporarily lease an appropriation right that comply with the requirements of this section are not subject to the provisions of 85-2-402, 85-2-407, 85-2-408, 85-2-410, or 85-2-436. After obtaining approval pursuant to this section, an appropriator may temporarily lease an appropriation right.

(2) The amount of water leased may not exceed the total consumptive use of the appropriation right. For an irrigation right, the consumptive volume may not exceed 2 acre-feet per acre irrigated.

(3) (a) Each appropriation right leased pursuant to this section:

(i) must have been in use within 5 years prior to the application date;

(ii) may be leased only during the period of diversion for the appropriation right;

(iii) may not be leased for more than 5 years during any consecutive 10-year period;

(iv) may not be leased for more than 40 days a year; and

(v) may only be leased for a beneficial use as defined in 85-2-102.

(b) The volume and flow rate of water leased may not exceed the appropriator's original water appropriation right.

(c) The point of diversion for the appropriation right may not be changed.

(4) The use of an appropriation right on a place of use associated with leased water is prohibited during any year that leased water is put to beneficial use.

(5) Storage may be temporarily added during the term of the leased appropriation right if the water is diverted at the original point of diversion and subsequently put to a beneficial use.

(6) This section does not apply to change in an appropriation right that would result in leased water being transported outside Montana. Proposed out-of-state uses are subject to the provisions of 85-2-402.

(7) Water leased pursuant to this section must be measured at the point of diversion by a meter approved by the department. The appropriator shall report the amount of water measured at the end of the year in which the lease occurred or upon request of the department.

(8) An applicant proposing to lease an appropriation right pursuant to this section shall submit an application on a form provided by the department and a fee as established by rule. The application must include:

(a) the name and address of each lessee;

(b) the names of all owners of each appropriation right;

(c) the number of each appropriation right;

(d) the proposed use and the place of use for the leased water;

(e) the source of water to be appropriated;

(f) the start and end dates of the proposed lease;

(g) the flow rate of the proposed diversion and the volume of water to be used during the lease;

(h) evidence that the appropriation right has been used within the last 5 years;

(i) a statement of potential adverse effect and a description of planned actions to mitigate potential adverse effects that, in aggregate, demonstrate no adverse effect;

(j) a copy of the executed lease agreement; and

(k) a description of how the existing beneficial use of the appropriation right would cease at the place of use during the lease period, including the number and location of acres to be removed from irrigation, if applicable.

(9) Within 10 days of receipt of an application, the department shall provide written notice to potentially affected appropriators identified by the department that are proximate to the point of diversion.

(10) (a) Within 30 days of receipt of an application, the department shall:

(i) determine whether the application is correct and complete;

(ii) evaluate whether the application meets the requirements of subsections (2), (3), and (8); and

(iii) approve or deny the application.

(b) The department may approve an application with conditions.

(c) Leased water may not be used until the department approves an application.

(11) (a) For a period of 30 days from a date an application is authorized pursuant to subsection (10), the department shall accept correct and complete objections to a proposed lease from a person whose property, water rights, or interests would be adversely affected by the proposed appropriation. The objection must be made on a form provided by the department.

(b) Within 5 business days of receipt of a correct and complete objection, the department shall determine whether the objection is valid. A valid objection must contain facts indicating that the rights of other appropriators would be adversely affected by the lease of the appropriation right. If the department determines that an objection is valid, the authorization of the lease is suspended and no water may be put to beneficial use pursuant to the lease.

(c) (i) The owner of an appropriation right whose authorization is suspended under subsection (11)(b) may request a hearing on the objection pursuant to the informal proceedings provided for in 2-4-604 within 15 days of notice of the suspension. At the hearing, the owner of the appropriation right has the burden of proof to prove lack of adverse effects.

(ii) If the owner proves by a preponderance of the evidence that the water rights of other appropriators will not be adversely affected by the lease, the department shall issue an order reinstating the authorization for the beneficial use of the leased appropriation right.

(iii) If the department determines that the water rights of other appropriators have been or will be adversely affected by the lease, the department may revoke the authorization or modify its approval with necessary terms, conditions, restrictions, or limitations.

(d) A person who purposely, with malicious intent, causes the suspension of a temporary lease pursuant to this section through an objection found invalid and frivolous is, upon conviction, guilty of a misdemeanor and shall be fined an amount not to exceed $500.

(12) Violations of this section are subject to the provisions of 85-2-114 and 85-2-122. This subsection does not limit the remedies available to an appropriator to enjoin or seek damages from the owner of an appropriation right who leased the water or from a lessee.

(13) The department shall report annually to the water policy interim committee provided for in 5-5-231 in accordance with 5-11-210. The report must include the number of leases, the amount of water leased, and the number of irrigated acres taken out of production.

(14) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.

History: En. Sec. 1, Ch. 347, L. 2025.

Compiler's Comments

Effective Date: This section is effective October 1, 2025.

85-2-429. Changes in appropriation rights — exceptions. (1) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system as defined in 75-6-102 if the redundant water supply well:

(i) withdraws water from the same source aquifer as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) (i) Within 60 days of completion of a redundant water supply well and the infrastructure necessary to use the well, the appropriator shall file a correct and complete notice of change in appropriation right for redundant water supply well construction with the department on a form provided by the department. If the redundant water supply well is located on national forest system lands, the notice is not correct and complete under this subsection (1)(c)(i) until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the redundant water supply well.

(ii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of change in appropriation right for redundant water supply well construction has been filed with the department.

(2) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the rule establishing the controlled ground water area do not restrict a change in appropriation right;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and the distance between the replacement well and the well being replaced is no greater than 200 feet;

(iv) the water from the replacement well is appropriated from the same source aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct, and complete notice of change in appropriation right for a replacement well is submitted to the department as provided in subsection (2)(b).

(b) The appropriator shall file a correct and complete notice of change in appropriation right for a replacement well with the department on a form provided by the department within 60 days after completion of a replacement well and appropriation of ground water for a beneficial use.

(c) For each well that is replaced under this subsection (2), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(3) (a) An appropriator may change an appropriation right for a replacement point of diversion without the prior approval of the department if:

(i) the existing point of diversion is inoperable due to natural causes or deteriorated infrastructure;

(ii) there are no other changes to the water right;

(iii) the capacity of the diversion is not increased;

(iv) there are no points of diversion or intervening water rights between the existing point of diversion and the replacement point of diversion or the appropriator obtains written waivers from all intervening water right holders;

(v) the replacement point of diversion is on the same surface water source and is located as close as reasonably practicable to the existing point of diversion;

(vi) the replacement point of diversion replaces an existing point of diversion and the existing point of diversion will no longer be used;

(vii) the existing point of diversion has been used in the 10 years prior to the notice for change of appropriation right for a replacement point of diversion;

(viii) the change will not increase access to water availability, change the method of irrigation, if applicable, or increase the amount of water diverted, used, or consumed; and

(ix) a timely, correct, and complete notice of change in appropriation right for a replacement point of diversion is submitted to the department as provided in subsection (3)(b).

(b) The appropriator shall file a correct and complete notice of change in appropriation right for a replacement point of diversion with the department on a form provided by the department within 60 days after completion of a replacement in point of diversion.

(4) (a) A municipality as defined in 7-1-4121 or a county water and sewer district organized under Title 7, chapter 13, part 22, may change the place of use for an unperfected municipal use permit or water reservation without the prior approval of the department if:

(i) the flow rate authorized by the permit or water reservation will not be exceeded;

(ii) the volume authorized by the permit or water reservation will not be exceeded;

(iii) the place of use is within:

(A) the municipality's land use plan and future land use map boundary duly adopted by the municipality pursuant to Title 76, chapter 25;

(B) the municipality's growth policy boundary duly adopted by the municipality pursuant to Title 76, chapter 1; or

(C) a county water and sewer district's service area boundary adopted under Title 7, chapter 13, part 23;

(iv) all water being diverted by the system is being measured; and

(v) there are no other changes to the water right or rights.

(b) The appropriator shall file a correct and complete notice of change in appropriation right for municipal use with the department on a form provided by the department within 180 days of annexation by a municipality under Title 7, chapter 2, or addition of land to a county water and sewer district under Title 7, chapter 13, part 23.

(c) A notice of change in appropriation right for municipal use may include a change in place of use for a water right that is not an unperfected permit or water reservation if:

(i) the criteria in subsection (4)(a) are satisfied for each unperfected permit and water reservation;

(ii) the criteria in subsection (4)(a) are satisfied for each additional water right being changed;

(iii) the unperfected volume of the unperfected permit or water reservation is adequate to satisfy the additional water use needs of the entire additional place of use;

(iv) the existing place of use is the same for all rights being changed; and

(v) all rights being changed share the same common distribution system.

(5) (a) An appropriator with a water right for stock use may add, move, or remove stock tanks without the prior approval of the department if:

(i) stock tanks are added to a water right for livestock direct from source;

(ii) stock tanks are added to or removed from an existing stock watering system; or

(iii) stock tanks are moved on an existing stock watering system.

(b) The following requirements must be met for a change filed under this subsection (5):

(i) the diverted flow rate of the stock watering system may not exceed the historical diverted flow rate of the stock watering system. If stock tanks are being added to a livestock direct from source water right, the maximum flow rate for the diversion to the tanks may not exceed 35 gallons a minute.

(ii) the number of stock animal units that will be watered on the system may not exceed the historical number of stock animal units watered;

(iii) the stock watering system infrastructure is adequate to control diversions and prevent waste of water; and

(iv) the appropriator has a possessory interest or the written consent of a person with a possessory interest in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the appropriator has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

(c) The appropriator shall file a correct and complete notice of change in appropriation right for stock tanks with the department on a form provided by the department within 60 days after stock tanks are added or moved.

(d) A temporary change in appropriation right for stock tanks may be authorized in accordance with 85-2-407.

(6) (a) If the department determines a notice of change in appropriation filed pursuant to subsections (1) through (5) is not correct and complete, the department shall return the notice to the appropriator, along with a notification describing the defects. A notice of change in appropriation right that is not corrected and completed within 60 days of the notification is terminated.

(b) Within 90 days of determining a notice of change in appropriation right is correct and complete, the department shall determine if the applicable criteria for issuance of a change in appropriation right are satisfied, and:

(i) if the department determines that the notice of change in appropriation right satisfies the applicable criteria in subsection (1), (2), (3), (4), or (5), the department shall issue an authorization of a change in appropriation right; or

(ii) if the department determines that the notice of change in appropriation right does not satisfy the criteria in subsection (1), (2), (3), (4), or (5), the department shall notify the appropriator, and the appropriator shall submit an application for a change in appropriation right to the department pursuant to 85-2-402.

(7) (a) If an authorization of a change in appropriation right is issued under subsection (3), (4), or (5), the department shall prepare a public notice that includes a summary of the change in appropriation right. The public notice must state that within no more than 45 days after the date of publication, a person may file with the department a written objection to the authorization of the change in appropriation right. The department shall publish the notice once in a newspaper of general circulation in the area of the source.

(b) The department shall also serve the notice by first-class mail on:

(i) an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation;

(ii) any purchaser under contract for deed as defined in 70-20-115 of property that according to the records of the department may be affected by the proposed appropriation; and

(iii) any public agency that has reserved waters in the source under 85-2-316.

(c) The department may, in the department's discretion, also serve notice on any state agency or other person the department believes may be interested in or affected by the proposed appropriation.

(d) The department shall file in the department's records proof of service by affidavit of the publisher in cases of notice by publication and by affidavit of the department in cases of service by mail.

(8) (a) An objector to a change authorization issued under subsection (3), (4), or (5) shall file a correct and complete objection on a form prescribed by the department on or before the date specified in the notice provided under subsection (7).

(i) A person has standing to file an objection under this subsection (8) if the property, water rights, or interests of the person would be adversely affected by the proposed change.

(ii) The department shall adopt rules delineating the components of a correct and complete objection.

(iii) The department shall notify the objector of any defect in an objection. An objection not corrected or completed within 15 business days from the date of notification of the defect is terminated.

(iv) An objection is valid if the objector has standing, has filed a correct and complete objection within the prescribed time, and has stated the applicable information required under this subsection (8) and the rules of the department.

(v) An objection must state facts indicating that the change in appropriation right:

(A) will adversely affect the use of the water rights of the objector or of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under Title 85, chapter 2, part 3; or

(B) does not satisfy the applicable criteria set forth in subsection (3), (4), or (5).

(b) If a valid objection is filed, the department shall hold a contested case hearing pursuant to 85-2-309. The contested case hearing is limited to those issues for which a correct and complete objection is filed. The appropriator changing the water right bears the burden of proof of lack of adverse effect or any of the criteria for which a correct and complete objection is filed.

(c) If the department determines after a contested case hearing on the objection that the rights of other appropriators have been or will be adversely affected or that the change in appropriation right does not satisfy the criteria set forth in subsection (3), (4), or (5), the department may revoke the change in appropriation right or make the change subject to terms, conditions, restrictions, or limitations necessary to protect the rights of other appropriators.

History: **En. Sec. 1, Ch. 679, L. 2025.**

Compiler's Comments

Effective Date: This section is effective October 1, 2025.

85-2-430 reserved.

85-2-431. Penalty. (1) A person who fails to comply with the requirements of 85-2-424 is liable for a civil penalty of not more than $300.

(2) An action to recover the penalty may be brought by the department and filed in the district court in the county where the real property is located.

(3) The department may recover its reasonable costs for recovering the penalty, including but not limited to attorney fees and costs incurred during collection.

(4) Any penalty fee collected under this section must be deposited in the water right appropriation account provided for in 85-2-318.

History: **En. Sec. 4, Ch. 271, L. 1985; amd. Sec. 4, Ch. 167, L. 1997; amd. Sec. 14, Ch. 70, L. 2005; amd. Sec. 6, Ch. 366, L. 2007; amd. Sec. 2, Ch. 260, L. 2021; amd. Sec. 53, Ch. 535, L. 2021.**

85-2-432 through 85-2-435 reserved.

85-2-436. Instream flow to protect, maintain, or enhance streamflows to benefit fishery resource — change in appropriation rights. (1) The department of fish, wildlife, and parks may change an appropriation right, which it either holds in fee simple or leases, to an instream flow purpose of use and a defined place of use to protect, maintain, or enhance streamflows to benefit the fishery resource.

(2) The change in purpose of use or place of use must meet all of the criteria and process outlined in 85-2-307 through 85-2-309, 85-2-401, and 85-2-402 and the additional criteria and process described in subsection (3) of this section to protect the rights of other appropriators from adverse impacts.

(3) (a) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of protecting, maintaining, or enhancing streamflows to benefit the fishery resource.

(b) The department may not approve a change in appropriation right until all objections are resolved.

(c) The application for a change in appropriation right authorization must include specific information on the length and location of the stream reach in which the streamflow is to be protected, maintained, or enhanced and must provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

(d) The maximum quantity of water that may be changed to instream flow is the amount historically diverted. However, only the amount historically consumed, or a smaller amount if specified by the department in the change in appropriation right authorization, may be used to protect, maintain, or enhance streamflows below the point of diversion that existed prior to the change in appropriation right.

(e) A lease for instream flow purposes may be entered for a term of up to 10 years, except that a lease of water made available from the development of a water conservation or storage project may be for a term equal to the expected life of the project but not more than 30 years. All leases may be renewed an indefinite number of times but not for more than 10 years for each term. Upon receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 90 days for submission of new evidence of adverse effects to other water rights. A change in appropriation right authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection (3)(i) submits evidence of adverse effects to the appropriator's rights that has not been considered previously. If new evidence is submitted, a change in appropriation right authorization must be obtained according to the requirements of 85-2-402.

(f) The department may modify or revoke the change in appropriation right authorization up to 10 years after it is approved if an appropriator other than an appropriator described in subsection (3)(i) submits new evidence not available at the time the change in appropriation right was approved that proves by a preponderance of evidence that the appropriator's water right is adversely affected.

(g) The priority of appropriation for a lease or change in appropriation right under this section is the same as the priority of appropriation of the right that is changed to an instream flow purpose.

(h) Neither a change in appropriation right nor any other authorization is required for the reversion of a leased appropriation right to the lessor's previous use.

(i) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a change in appropriation right authorization under this section may not object to the exercise of the changed water right according to its terms or to the reversion of a leased appropriation right to the lessor according to the lessor's previous use.

(j) The department of fish, wildlife, and parks shall pay all costs associated with installing devices or providing personnel to measure streamflows according to the measuring plan required under this section.

(4) (a) The department of fish, wildlife, and parks shall complete and submit to the department, commission, and water policy interim committee a biennial progress report in accordance with 5-11-210. This report must include a summary of all appropriation rights changed to an instream flow purpose in the last 2 years.

(b) For each change in appropriation right to an instream flow purpose, the report must include a copy of the change authorization issued by the department and must address:

(i) the length of the stream reach and how it is determined;

(ii) critical streamflow or volume needed to protect, maintain, or enhance streamflow to benefit the fishery resource;

(iii) the amount of water available for instream flow as a result of the change in appropriation right;

(iv) contractual parameters, conditions, and other steps taken to ensure that each change in appropriation right does not harm other appropriators, particularly if the stream is one that experiences natural dewatering; and

(v) methods used to monitor use of water under each change in appropriation right.

(5) This section does not create the right for a person to bring suit to compel the renewal of a lease that has expired.

(6) (a) From May 8, 2007, through June 30, 2029, the department of fish, wildlife, and parks may change, pursuant to this section, the appropriation rights that it holds in fee simple to instream flow purposes on no more than 12 stream reaches.

(b) After June 30, 2029, the department of fish, wildlife, and parks may not change the appropriation rights that it holds in fee simple to instream flow purposes on any stream reaches.

(7) After June 30, 2029, the department of fish, wildlife, and parks may not enter into any new lease agreements pursuant to this section or renew any leases that will expire after that date.

History: En. Sec. 6, Ch. 658, L. 1989; amd. Sec. 1, Ch. 740, L. 1991; amd. Sec. 1, Ch. 175, L. 1993; amd. Sec. 8, Ch. 370, L. 1993; amd. Sec. 457, Ch. 418, L. 1995; amd. Sec. 9, Ch. 487, L. 1995; amd. Sec. 73, Ch. 545, L. 1995; amd. Sec. 2, Ch. 123, L. 1999; amd. Sec. 8, Ch. 85, L. 2005; amd. Sec. 5, Ch. 448, L. 2007; amd. Sec. 42, Ch. 19, L. 2011; amd. Sec. 12, Ch. 122, L. 2015; amd. Sec. 1, Ch. 485, L. 2019; amd. Sec. 123, Ch. 261, L. 2021.

Cross-References

Definition of appropriate and beneficial use, 85-2-102.
Changes in appropriation rights, 85-2-402.
Abandonment of appropriation right, 85-2-404.
Contributions for leasing appropriation rights — general spending authority, 87-1-610.

85-2-437. Repealed. Sec. 8, Ch. 448, L. 2007.

History: En. Sec. 4, Ch. 658, L. 1989; amd. Sec. 2, Ch. 740, L. 1991; amd. Sec. 2, Ch. 175, L. 1993; amd. Sec. 458, Ch. 418, L. 1995; amd. Sec. 3, Ch. 123, L. 1999.

85-2-438. Repealed. Sec. 8, Ch. 448, L. 2007.

History: En. Sec. 3, Ch. 740, L. 1991; amd. Sec. 4, Ch. 123, L. 1999.

85-2-439. Repealed. Sec. 9, Ch. 85, L. 2005.

History: En. Sec. 6, Ch. 487, L. 1995.

85-2-440. Repealed. Sec. 9, Ch. 85, L. 2005.

History: En. Sec. 4, Ch. 353, L. 1997.

85-2-441. Temporary use of a water right on state trust land — restrictions on state ownership — rescinding of noncompliant ownership interests required. (1) A water right owner may put water from a well or developed spring with ground water development works located on private land to beneficial use on state trust land for the duration of a state land lease the water right owner holds.

(2) The state may not obtain an ownership interest in a water right or the ground water development works of a water right that is diverted from a well or developed spring located on private land exclusively based on trustee obligations for state trust land unless:

(a) a court of competent jurisdiction determines that the state is an owner of that particular water right; or

(b) the state is in possession of a deed transferring ownership of the water right to the state.

(3) Before September 30, 2019, the state shall rescind any claim of ownership it asserted or acquired to satisfy trustee obligations for state trust land prior to May 11, 2019, in a water right or ground water development works that do not meet the requirements of subsection (2).

(4) For the purposes of this section, "state trust land" has the meaning provided in 77-1-101.

History: **En. Sec. 1, Ch. 432, L. 2019.**

Cross-References

Administration of state lands, Title 77, ch. 1.

Part 5
Ground Water

Part Cross-References

Board of Water Well Contractors, 2-15-3307.

Water well contractors, Title 37, ch. 43.

Metal mine monitoring of water quality and quantity — action for damages to water supply, 82-4-355.

85-2-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Aquifer" means any underground geological structure or formation that is capable of yielding water in usable quantities or is capable of recharge.

(2) "Aquifer test" means stressing an aquifer by removing or adding water at a known rate or changing the pressure by a known quantity and measuring the resultant change in hydraulic head for the purpose of determining the aquifer's hydraulic properties near the tested well.

(3) "Bureau" means the Montana state bureau of mines and geology provided for in 20-25-211.

(4) "Ground water" means any water that is beneath the ground surface.

(5) "Ground water area" means an area that, as nearly as known facts permit, may be designated so as to enclose a single and distinct body of ground water, which must be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations if conditions dictate vertical limits to be desirable.

History: **En. Sec. 1, Ch. 237, L. 1961; amd. Sec. 16, Ch. 280, L. 1965; amd. Sec. 1, Ch. 307, L. 1971; amd. Sec. 40, Ch. 452, L. 1973; amd. Sec. 167, Ch. 253, L. 1974; amd. Sec. 8, Ch. 460, L. 1977; R.C.M. 1947, 89-2911(part); amd. Sec. 1, Ch. 561, L. 1979; amd. Sec. 11, Ch. 805, L. 1991; amd. Sec. 1, Ch. 412, L. 2007; amd. Sec. 3, Ch. 86, L. 2009.**

85-2-502. Administrative rules. The department may prescribe and enforce reasonable rules concerning and providing for inspection and entry, the circumstances under which the construction of weirs or other measuring devices may be required, and other similar matters that are required by and consistent with the administration of this part.

History: **En. Sec. 21, Ch. 237, L. 1961; amd. Sec. 177, Ch. 253, L. 1974; R.C.M. 1947, 89-2931; amd. Sec. 459, Ch. 418, L. 1995.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

85-2-503. Controlled ground water subareas. For purposes of administration, large ground water areas may be divided into convenient administrative units known as subareas.

History: **En. Sec. 1, Ch. 237, L. 1961; amd. Sec. 16, Ch. 280, L. 1965; amd. Sec. 1, Ch. 307, L. 1971; amd. Sec. 40, Ch. 452, L. 1973; amd. Sec. 167, Ch. 253, L. 1974; amd. Sec. 8, Ch. 460, L. 1977; R.C.M. 1947, 89-2911(part).**

85-2-504. Standards for determining fresh water. Fresh water shall be considered to be water fit for domestic, livestock, or agricultural use. The department, after notice and hearing, may fix definite standards for determining fresh water in any controlled ground water area or subarea of the state.

History: **En. Sec. 1, Ch. 237, L. 1961; amd. Sec. 16, Ch. 280, L. 1965; amd. Sec. 1, Ch. 307, L. 1971; amd. Sec. 40, Ch. 452, L. 1973; amd. Sec. 167, Ch. 253, L. 1974; amd. Sec. 8, Ch. 460, L. 1977; R.C.M. 1947, 89-2911(part).**

Cross-References

Water quality — classification and standards, Title 75, ch. 5, part 3.

85-2-505. Waste and contamination of ground water prohibited. (1) No ground water may be wasted. The department shall require all wells producing waters that contaminate other waters to be plugged or capped. It shall also require all flowing wells to be so capped or equipped with valves that the flow of water can be stopped when the water is not being put to beneficial use. Likewise, both flowing and nonflowing wells must be so constructed and maintained as to prevent the waste, contamination, or pollution of ground water through leaky casings, pipes, fittings, valves, or pumps either above or below the land surface. However, in the following cases the withdrawal or use of ground water may not be construed as waste under this part:

(a) the withdrawal of reasonable quantities of ground water in connection with the construction, development, testing, or repair of a well or other means of withdrawal of ground water;

(b) the inadvertent loss of ground water owing to breakage of a pump, valve, pipe, or fitting, if reasonable diligence is shown by the person in effecting the necessary repair;

(c) the disposal of ground water without further beneficial use that must be withdrawn for the sole purpose of improving or preserving the utility of land by draining the same or that must be removed from a mine to permit mining operations or to preserve the mine in good condition;

(d) the disposal of ground water used in connection with producing, reducing, smelting, and milling metallic ores and industrial minerals or that displaced from an aquifer by the storage of other mineral resources; and

(e) the management, discharge, or reinjection of ground water produced in association with a coal bed methane well in accordance with 82-11-175(2)(b) through (2)(d).

(2) The department at any time may hold a hearing on its own motion or upon petition signed by a representative body of users of ground water in any area or subarea to determine whether the water supply within that area or subarea is used in compliance with this part.

History: En. Sec. 16, Ch. 237, L. 1961; amd. Sec. 173, Ch. 253, L. 1974; amd. Sec. 47, Ch. 460, L. 1977; R.C.M. 1947, 89-2926; amd. Sec. 5, Ch. 578, L. 2001.

Cross-References

Water quality, Title 75, ch. 5.
Prevention of waste, 85-2-114.
Permit for conversion of nonproductive oil or gas well, 85-2-303.
Drainage districts, Title 85, ch. 8.

85-2-506. Controlled ground water areas — designation or modification. (1) The department may by rule designate or modify permanent or temporary controlled ground water areas as provided in this part. The rule for each controlled ground water area must designate the boundaries of the controlled ground water area.

(2) The rulemaking process for designation or modification of a controlled ground water area may be initiated by:

(a) the department;

(b) submission of a correct and complete petition from a state or local public health agency for identified public health risks; or

(c) submission of a correct and complete petition:

(i) by a municipality, county, conservation district, or local water quality district formed under Title 7, chapter 13, part 45; or

(ii) signed by at least one-third of the water right holders in a proposed controlled ground water area.

(3) (a) A correct and complete petition must:

(i) be in a form prescribed by the department and must contain analysis prepared by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer concluding that one or more of the criteria provided in subsection (5) are met; and

(ii) describe proposed measures, if any, to mitigate effects of the criteria identified in subsection (5) that are alleged in the petition.

(b) When the department proposes a rule pursuant to this section, the place for the hearing must be within or as close as practical to the proposed or existing controlled ground water area.

(c) (i) The department shall notify the petitioner of any defects in a petition within 180 days. If the department does not notify the petitioner of any defects within 180 days, the petition must be treated as correct and complete.

(ii) A petition that is not made correct and complete within 90 days from the date of notification by the department of any defect is terminated.

(4) (a) Within 60 days after a petition is determined to be correct and complete, the department shall:

(i) deny in writing the petition in whole or in part, stating the reasons for denial;

(ii) inform the petitioner that the department will study the information presented in the petition for a period not to exceed 90 days before denying or proceeding with the petition; or

(iii) initiate rulemaking proceedings in accordance with Title 2, chapter 4, part 3.

(b) Failure of the department to act under subsection (4)(a) does not mandate that the department grant the petition for rulemaking.

(c) In addition to the notice requirements of Title 2, chapter 4, parts 1 through 4, the department shall provide public notice of the rulemaking hearing by:

(i) publishing a notice at least once each week for 3 successive weeks, with the first notice not less than 30 days before the date of the hearing in a newspaper of general circulation in the county or counties in which the proposed controlled ground water area is located;

(ii) serving by mail a copy of the notice, not less than 30 days before the hearing, upon each person or public agency known from an examination of the records of the department to be a water right holder with a diversion within the proposed controlled ground water area, all landowners of record within the proposed controlled ground water area, and each well driller licensed in Montana whose address is within any county in which any part of the proposed controlled ground water area is located; and

(iii) serving by mail a copy of the notice upon any other person or state or federal agency that the department feels may be interested in or affected by the proposed designation or modification of a controlled ground water area.

(d) The notice under subsection (4)(c) must include a summary of the basis for the proposed rule. Publication and mailing of the notice as prescribed in this section, when completed, is considered to be sufficient notice of the hearing to all interested persons.

(5) The department may designate a permanent controlled ground water area by rule if it finds by a preponderance of the evidence that any of the following criteria have been met and cannot be appropriately mitigated:

(a) current or projected reductions of recharge to the aquifer or aquifers in the proposed controlled ground water area will cause ground water levels to decline to the extent that water right holders cannot reasonably exercise their water rights;

(b) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have reduced or will reduce ground water levels or surface water availability necessary for water right holders to reasonably exercise their water rights;

(c) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have induced or altered or will induce or alter contaminant migration exceeding relevant water quality standards;

(d) current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have impaired or will impair ground water quality necessary for water right holders to reasonably exercise their water rights based on relevant water quality standards;

(e) ground water within the proposed controlled ground water area is not suited for beneficial use; or

(f) public health, safety, or welfare is or will become at risk.

(6) (a) If the department finds that sufficient facts are not available to designate a permanent controlled ground water area, it may designate by rule a temporary controlled ground water area to allow studies to obtain the facts needed to determine whether or not it is appropriate to designate a permanent controlled ground water area. The department shall set the length of time that the temporary controlled ground water area will be in effect. Subject to subsection (6)(c), the term of a temporary controlled ground water area may be extended by rule.

(b) A temporary controlled ground water area designation is for the purpose of study and cannot include the control provisions provided in subsection (7), other than measurement, water quality testing, and reporting requirements.

(c) A temporary controlled ground water area designation may not exceed a total of 6 years, including any extensions.

(d) Prior to expiration of a temporary controlled ground water area, the department may amend or repeal the rule establishing the temporary controlled ground water area or may designate a permanent controlled ground water area through the rulemaking process under this section.

(e) Studies for temporary controlled ground water areas may be considered for funding under the renewable resource grant and loan program in Title 85, chapter 1, part 6.

(f) If there is a ground water investigation program within the bureau, the ground water assessment steering committee established by 2-15-1523 shall consider temporary controlled ground water areas for study.

(7) A controlled ground water area may include but is not limited to the following control provisions:

(a) a provision closing the controlled ground water area to further appropriation of ground water;

(b) a provision restricting the development of future ground water appropriations in the controlled ground water area by flow, volume, purpose, aquifer, depth, water temperature, water quality, density, or other criteria that the department determines necessary;

(c) a provision requiring measurement of future ground water or surface water appropriations;

(d) a provision requiring the filing of notice on land records within the boundary of a permanent controlled ground water area to inform prospective holders of an interest in the property of the existence of a permanent controlled ground water area. Notice of the designation must be removed or modified as necessary to accurately reflect modification or repeal of a permanent designation within 60 days.

(e) a provision for well spacing requirements, well construction constraints, and prior department approval before well drilling, unless the well is regulated pursuant to Title 82, chapter 11;

(f) a provision for mitigation of ground water withdrawals;

(g) a provision for water quality testing;

(h) a provision for data reporting to the department; and

(i) other control provisions that the department determines are appropriate and adopts through rulemaking.

(8) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.

History: En. Sec. 4, Ch. 237, L. 1961; amd. Sec. 168, Ch. 253, L. 1974; R.C.M. 1947, 89-2914; amd. Sec. 2, Ch. 561, L. 1979; amd. Sec. 1, Ch. 189, L. 1985; amd. Sec. 4, Ch. 460, L. 1993; amd. Sec. 460, Ch. 418, L. 1995; amd. Sec. 13, Ch. 391, L. 2007; amd. Sec. 5, Ch. 86, L. 2009; amd. Sec. 10, Ch. 294, L. 2015.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.
Water well contractors, Title 37, ch. 43.
Montana coordinate system — land description, Title 70, ch. 22, part 2.

85-2-507. Repealed. Sec. 8, Ch. 86, L. 2009.

History: En. Sec. 5, Ch. 237, L. 1961; amd. Sec. 41, Ch. 452, L. 1973; amd. Sec. 169, Ch. 253, L. 1974; R.C.M. 1947, 89-2915; amd. Sec. 3, Ch. 561, L. 1979; amd. Sec. 148, Ch. 370, L. 1987; amd. Sec. 461, Ch. 418, L. 1995; amd. Sec. 5, Ch. 161, L. 2005.

85-2-508. Controlled ground water areas — permits to appropriate. (1) A person may appropriate ground water in a controlled ground water area by:

(a) applying for and receiving a permit from the department in accordance with part 3 of this chapter; or

(b) following the requirements of a rule promulgated pursuant to 85-2-506.

(2) The department may not grant a permit if the withdrawal would be beyond the capacity of the aquifer or aquifers in the controlled ground water area to yield ground water within a reasonable or feasible pumping lift, in the case of pumping developments, or within a reasonable or feasible reduction of pressure, in the case of artesian developments.

History: En. Sec. 8, Ch. 237, L. 1961; amd. Sec. 43, Ch. 452, L. 1973; amd. Sec. 172, Ch. 253, L. 1974; R.C.M. 1947, 89-2918; amd. Sec. 6, Ch. 161, L. 2005; amd. Sec. 6, Ch. 86, L. 2009.

Cross-References

Application for permit, 85-2-302.
Terms of permit, 85-2-312.

85-2-509. Repealed. Sec. 8, Ch. 86, L. 2009.

History: En. Sec. 6, Ch. 237, L. 1961; amd. Sec. 170, Ch. 253, L. 1974; R.C.M. 1947, 89-2916(1), (3).

85-2-510. Production of water from oil and gas wells — hearings — jurisdiction of board of oil and gas conservation. The regulation of the production, use, or disposal of fresh, brackish, or saline water that is entirely the result of the production of oil or gas, or both, must be under the jurisdiction of the board of oil and gas conservation and is subject to the requirements of 82-11-123. Hearings pertaining to the production, use, or disposal of water from those wells must be held by that board in accordance with the procedures established by that board. The department may petition the board of oil and gas conservation for hearings in regard to those operations, and it must be notified by the board of oil and gas conservation of those hearings instigated by other parties.

History: En. Sec. 6, Ch. 237, L. 1961; amd. Sec. 170, Ch. 253, L. 1974; R.C.M. 1947, 89-2916(2); amd. Sec. 2, Ch. 555, L. 2023.

Cross-References

Abandoned oil and gas wells — reclamation, Title 82, ch. 10, part 4.
Regulation by Board of Oil and Gas Conservation, Title 82, ch. 11, part 1.
Permit for conversion of nonproductive oil or gas well, 85-2-303.

85-2-511. Repealed. Sec. 8, Ch. 86, L. 2009.

History: En. Sec. 7, Ch. 237, L. 1961; amd. Sec. 42, Ch. 452, L. 1973; amd. Sec. 171, Ch. 253, L. 1974; R.C.M. 1947, 89-2917.

85-2-512. Investigations. (1) The department shall compile information for the purpose of enabling it to comply with this part. In compiling this information, the department shall make use of investigations, technical personnel, surveys, and information available from the Montana bureau of mines and geology, the United States geological survey, the board of oil and gas conservation, the department of environmental quality, and any other private, state, or governmental agency.

(2) The department may request specific investigations by the public agencies listed in subsection (1) whenever desired information is not otherwise available.

History: En. Sec. 23, Ch. 237, L. 1961; amd. Sec. 179, Ch. 253, L. 1974; R.C.M. 1947, 89-2933; amd. Sec. 462, Ch. 418, L. 1995.

Cross-References

Bureau of Mines and Geology — purpose, 20-25-212.
Water quality, Title 75, ch. 5.
Board of Oil and Gas Conservation, Title 82, ch. 11, part 1.

85-2-513. Repealed. Sec. 8, Ch. 86, L. 2009.

History: En. Sec. 24, Ch. 237, L. 1961; amd. Sec. 180, Ch. 253, L. 1974; R.C.M. 1947, 89-2934.

85-2-514. Inspection of wells. The department, the state bureau of mines and geology, or the department of environmental quality may enter on the property of any appropriator where a well is situated, at any reasonable hour of the day, for the purpose of investigating any matters in connection with this part.

History: En. Sec. 17, Ch. 237, L. 1961; amd. Sec. 174, Ch. 253, L. 1974; R.C.M. 1947, 89-2927; amd. Sec. 463, Ch. 418, L. 1995.

Cross-References

Environmental advisory boards, Title 2, ch. 15, part 21.
Bureau of Mines and Geology — purpose, 20-25-212.
Entry on land, 85-2-115.

85-2-515. Information available to public. Such information as is required or secured under the provisions hereof shall constitute public records and as such shall be available to the public at all reasonable times.

History: En. Sec. 18, Ch. 237, L. 1961; R.C.M. 1947, 89-2928.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Public records, Title 2, ch. 6.

85-2-516. Well logs. (1) Within 60 days after any well is completed, the driller shall file with the bureau a well log report.

(2) Except as provided in subsection (3), the well log report must be filed on a form specified by the department in consultation with the board of water well contractors provided for in 2-15-3307 and the bureau. The driller shall provide a location for the well using at least two methods as specified on the form.

(3) The bureau may allow submission of the well log report in an electronic format that is in accordance with the form specified as provided in subsection (2).

(4) The bureau may return the report for refiling if it is incomplete or incorrect.

History: En. 89-2928.1 by Sec. 44, Ch. 452, L. 1973; amd. Sec. 175, Ch. 253, L. 1974; R.C.M. 1947, 89-2928.1; amd. Sec. 4, Ch. 78, L. 2001; amd. Sec. 1, Ch. 14, L. 2003; amd. Sec. 2, Ch. 412, L. 2007.

Cross-References

Measurement of water, 85-2-103.

Department duties, 85-2-112.

85-2-517. Reports by water well drillers. The forms, reports, and information required to be filed by this part are in addition to all other reports and information which the drillers of water wells in the state are required by law to file with agencies of the state.

History: En. Sec. 19, Ch. 237, L. 1961; amd. Sec. 48, Ch. 460, L. 1977; R.C.M. 1947, 89-2929.

Cross-References

Water well contractors, Title 37, ch. 43.

85-2-518. Repealed. Sec. 8, Ch. 86, L. 2009.

History: En. Sec. 22, Ch. 237, L. 1961; amd. Sec. 178, Ch. 253, L. 1974; R.C.M. 1947, 89-2932.

85-2-519. Repealed. Sec. 500, Ch. 418, L. 1995.

History: En. 89-2934.1 by Sec. 45, Ch. 452, L. 1973; amd. Sec. 181, Ch. 253, L. 1974; R.C.M. 1947, 89-2934.1.

85-2-520. Repealed. Sec. 8, Ch. 86, L. 2009.

History: En. Sec. 26, Ch. 237, L. 1961; amd. Sec. 182, Ch. 253, L. 1974; R.C.M. 1947, 89-2936; amd. Sec. 464, Ch. 418, L. 1995.

85-2-521. Renumbered 82-11-175. Sec. 1, Ch. 117, L. 2003.

85-2-522. Aquifer tests. (1) Aquifer tests required by a state agency must be forwarded by the agency to the bureau.

(2) Except as provided in subsection (3), the aquifer test report must be filed on a form specified by the department in consultation with the department of environmental quality and the bureau.

(3) The bureau may allow submission of an aquifer test report in an electronic format if it meets the requirements for the form provided for in subsection (2).

History: En. Sec. 3, Ch. 412, L. 2007.

85-2-523. Rulemaking. The department shall adopt rules for the purpose of implementing 85-2-506 and other controlled ground water area statutes. The rules must include but are not limited to petition requirements and the hearing procedure and process for controlled ground water areas.

History: En. Sec. 4, Ch. 86, L. 2009.

85-2-524. Criteria for petition applications. Municipalities, counties, conservation districts, and local water quality districts may establish specific criteria for acceptance of an application to the municipality, county, conservation district, or local water quality district to petition for creation of a controlled ground water area and other criteria necessary to implement this part. Those criteria may include but are not limited to:

(1) the submission of substantial credible evidence that one or more of the criteria provided in 85-2-506(5) are met;

(2) a description of proposed measures, if any, to mitigate effects of the criteria identified in 85-2-506(5);

(3) a description of proposed studies for a temporary controlled ground water area;

(4) a requirement that an application be supported by owners of at least one-fourth of the water rights with a point of diversion of water within the boundaries of the proposed controlled ground water area;

(5) a requirement that an applicant pay an application or processing fee for the application; and

(6) a description of proposed funding for studies for a controlled ground water area.

History: En. Sec. 7, Ch. 86, L. 2009.

85-2-525. Ground water investigation program — advisory committee. (1) The Montana bureau of mines and geology shall develop and implement a ground water investigation program for the purpose of collecting and compiling ground water and aquifer data. The program shall gather data, compile existing information, conduct field studies, and prepare a detailed hydrogeologic assessment report for each subbasin. The program shall develop a monitoring plan and a hydrogeologic model for each subbasin for which a report is prepared.

(2) The ground water assessment steering committee, established by 2-15-1523, shall prioritize subbasins for investigation based upon current and anticipated growth of agriculture, industry, housing, and commercial activity. Permit applications for the development of surface water or ground water and the timing of adjudication of water rights may be taken into account in prioritizing subbasins.

(3) The bureau of mines and geology shall report, in accordance with 5-11-210, on the work of the ground water investigation program to the water policy committee established in 5-5-231.

History: En. Sec. 1, Ch. 436, L. 2009; amd. Sec. 4, Ch. 465, L. 2019.

Cross-References

Bureau of Mines and Geology — purpose, 20-25-212.

85-2-526. Terminated. Sec. 7, Ch. 465, L. 2019.

History: En. Sec. 1, Ch. 465, L. 2019.

85-2-527. Terminated. Sec. 7, Ch. 465, L. 2019.

History: En. Sec. 2, Ch. 465, L. 2019.

Part 6

Yellowstone River Basin

Part Cross-References

Diversions from Yellowstone River Basin, Title 85, ch. 2, part 8.
Yellowstone River Compact, Title 85, ch. 20, part 1.

85-2-601. Statement of legislative findings and policy. The legislature, noting that appropriations have been claimed, that applications have been filed for, and that there is further widespread interest in making substantial appropriations of water in the Yellowstone River basin, finds that these appropriations threaten the depletion of Montana's water resources to the significant detriment of existing and projected agricultural, municipal, recreational, and other uses and of wildlife and aquatic habitat. The legislature further finds that these appropriations foreclose the options to the people of this state to utilize water for other future beneficial purposes, including municipal water supplies, irrigation systems, and minimum flows for the protection of existing rights and aquatic life. The legislature, pursuant to its mandate and authority under Article IX of the Montana constitution, declares that it is the policy of this state that before these proposed appropriations are acted upon, existing rights to water in the Yellowstone basin must be accurately determined for their protection and that reservations of water within the basin must be established as rapidly as possible for the preservation and protection of existing and future beneficial uses.

History: En. 89-8-103 by Sec. 1, Ch. 116, L. 1974; R.C.M. 1947, 89-8-103.

Cross-References

Environmental protection and improvement, Art. IX, sec. 1, Mont. Const.
Water rights, Art. IX, sec. 3, Mont. Const.
Department powers over state waters, 85-1-204.
Negotiations with other states by Department, 85-1-223.
Declaration of policy and purpose, 85-2-101.

85-2-602. Definitions. Unless the context clearly requires otherwise, in this part the following definitions apply:

(1) (a) "Application" means an application for a permit under part 3 of this chapter to appropriate surface water from any source of supply within the basin for either or both of the following purposes:

(i) a reservoir with a total planned capacity of 14,000 acre-feet or more; or

(ii) for a flow rate greater than 20 cubic feet of water per second.

(b) The term also includes an application for approval under 85-2-402 and 85-2-436, if applicable, to change the purpose of use.

(2) "Basin" means the Yellowstone River basin.

(3) "Reservation" means a reservation of water provided for by 85-2-316.

History: En. 89-8-104 by Sec. 2, Ch. 116, L. 1974; R.C.M. 1947, 89-8-104(Intro.), (2) thru (4); amd. Sec. 6, Ch. 448, L. 2007.

85-2-603. Suspension of action. (1) The department may not grant or otherwise take any action on an application until one of the following first occurs:

(a) the department makes a final determination on the applications for reservations of water in the basin filed before January 1, 1977, in accordance with 85-2-316;

(b) a final determination of existing rights has been made in the source of supply in accordance with part 2 of this chapter; or

(c) January 1, 1978. However, if a court stays or enjoins the continuance of proceedings on any pending application for reservation of water in the basin filed before January 1, 1977, and the stay or injunction prevents the board from making a final determination on the application before January 1, 1978, the court shall extend this date by the length of delay incurred. The court may not extend this date beyond January 15, 1979.

(2) A reservation established before an application for permit is granted is a preferred use over the right to appropriate water pursuant to the permit, and the permit, if granted, must be issued subject to that preferred use.

History: En. 89-8-105 by Sec. 3, Ch. 116, L. 1974; amd. Sec. 1, Ch. 26, L. 1977; R.C.M. 1947, 89-8-105; amd. Sec. 465, Ch. 418, L. 1995.

85-2-604. When department may suspend action. The department may suspend action on applications not meeting the definition of application in 85-2-602 if it determines, after a public hearing conducted under the contested case procedures of the Montana Administrative Procedure Act, that the cumulative impact of those applications, if granted, would be contrary to the policies and purposes of this part. If the department suspends action on such applications, the provisions of 85-2-603 apply.

History: En. 89-8-106 by Sec. 4, Ch. 116, L. 1974; R.C.M. 1947, 89-8-106.

Cross-References

Contested case hearing, 2-4-612.

85-2-605. Reservations. (1) The department may apply for reservations and shall, as rapidly as possible, assist other appropriate state agencies and political subdivisions in applying for reservations within the basin. The United States or any agency of the United States may apply for reservation of water in the basin under 85-2-316 for beneficial use of that water in the state of Montana. Particular emphasis must be given to applications to reserve water for agricultural, municipal, and minimum flow purposes for the protection of existing rights and aquatic life.

(2) Notwithstanding other provisions of this title, the department shall extend the duration of the 14 conservation district reservations and 8 municipal reservations approved by administrative order dated December 15, 1978, in the basin until those reservations are perfected, or until those reservations are revoked pursuant to 85-2-316.

History: En. 89-8-107 by Sec. 5, Ch. 116, L. 1974; amd. Sec. 10, Ch. 416, L. 1977; R.C.M. 1947, 89-8-107; amd. Sec. 1, Ch. 145, L. 1997.

Cross-References

Negotiations with other states by Department, 85-1-223.
Department powers, 85-2-111.

85-2-606. Application of part. This part applies to applications currently pending with the department, as well as applications filed with the department after March 11, 1974.

History: En. 89-8-108 by Sec. 6, Ch. 116, L. 1974; R.C.M. 1947, 89-8-108.

85-2-607. Utility facilities. This part does not apply to applications to appropriate water for use by a utility facility for which a certificate of compliance is granted pursuant to the Montana Major Facility Siting Act.

History: En. 89-8-109 by Sec. 7, Ch. 116, L. 1974; R.C.M. 1947, 89-8-109; amd. Sec. 16, Ch. 217, L. 2003.

Cross-References

Montana Major Facility Siting Act — certification proceedings, Title 75, ch. 20, part 2.

85-2-608. Certain changes of use allowed. Notwithstanding any provision of this part, the department may approve a change of purpose of use to agricultural, irrigation, domestic, and municipal uses if it determines that the change is not contrary to the policies and purposes of this part.

History: En. 89-8-110 by Sec. 8, Ch. 116, L. 1974; R.C.M. 1947, 89-8-110.

Cross-References

Changes in appropriation rights, 85-2-402.

Part 7
Indian and Federal Water Rights — Water Rights Within Indian Reservations

Part Cross-References

Indian lands recognized to be under federal jurisdiction, Art. I, Mont. Const.
Reserved Water Rights Compact Commission, 2-15-212.
Fort Peck-Montana Compact, Title 85, ch. 20, part 2.
Northern Cheyenne-Montana Compact, Title 85, ch. 20, part 3.

85-2-701. Legislative intent. (1) Because the water and water rights within each water division are interrelated, it is the intent of the legislature to conduct unified proceedings for the general adjudication of existing water rights under the Montana Water Use Act. It is the intent of the legislature that the unified proceedings include all claimants of reserved Indian water rights as necessary and indispensable parties under authority granted the state by 43 U.S.C. 666. However, it is further intended that the state of Montana proceed under the provisions of this part in an effort to conclude compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights within the state.

(2) To the maximum extent possible, the reserved water rights compact commission established under 2-15-212 should make the negotiation of water rights claimed by the federal government or Indian tribes in or affecting the basins identified by 85-2-218 its highest priority. In negotiations, the commission is acting on behalf of the governor.

History: En. Sec. 27, Ch. 697, L. 1979; amd. Sec. 9, Ch. 651, L. 1987; amd. Sec. 466, Ch. 418, L. 1995; amd. Sec. 298, Ch. 42, L. 1997.

Cross-References

Reserved Water Rights Compact Commission, 2-15-212.
Policy considerations, 85-1-101.
Negotiations with other states by Department, 85-1-223.
Declaration of policy and purpose, 85-2-101.
Statement of claim for federal reserved water rights, 85-2-224.
Final decree, 85-2-234.

85-2-702. Negotiation with Indian tribes. (1) The reserved water rights compact commission, created by 2-15-212, may negotiate with the Indian tribes or their authorized representatives jointly or severally to conclude compacts authorized under 85-2-701. Compact proceedings must be commenced by the commission. The commission shall serve by certified mail directed to the governing body of each tribe a written request for the initiation of negotiations under this part and a request for the designation of an authorized representative of the tribe to conduct compact negotiations. Compact negotiations commence upon receipt of the written designation from the governing body of a tribe.

(2) When the compact commission and the Indian tribes or their authorized representatives have agreed to a compact, they shall sign a copy and file an original copy with the department of state of the United States of America and copies with the secretary of state of Montana and with the governing body for the tribe involved. The compact is effective and binding upon all parties upon ratification by the legislature of Montana and any affected tribal governing body, and approval by the appropriate federal authority.

(3) Upon its ratification by the Montana legislature and the tribe, the terms of a compact must be included in the preliminary decree as provided by 85-2-231, and unless an objection to the compact is sustained under 85-2-233, the terms of the compact must be included in the final decree without alteration. However, if approval of the state legislature and the tribe has not been accomplished by July 1, 2013, all Indian claims for reserved water rights that have not

been resolved by a compact must be filed with the department within 24 months. These new filings must be used in the formulation of the preliminary decree and must be given treatment similar to that given to all other filings.

History: **En. Sec. 27, Ch. 697, L. 1979; amd. Sec. 8, Ch. 268, L. 1981; amd. Sec. 6, Ch. 667, L. 1985; amd. Sec. 2, Ch. 358, L. 1987; amd. Sec. 3, Ch. 784, L. 1991; amd. Sec. 2, Ch. 44, L. 1997; amd. Sec. 2, Ch. 103, L. 2003; amd. Sec. 2, Ch. 5, L. 2009.**

Cross-References

Jurisdiction on Indian lands, Title 2, ch. 1, part 3.

85-2-703. Negotiation with federal government. The compact commission may also enter into separate negotiations with the federal government for the conclusion of compacts concerning the equitable division and apportionment of water between the state and its people and the federal government claiming non-Indian reserved waters within the state. The terms and conditions of such negotiations shall be the same as provided in this section for negotiations with Indian tribes.

History: **En. Sec. 27, Ch. 697, L. 1979.**

Cross-References

Negotiations with other states by Department, 85-1-223.

85-2-704. Termination of negotiations. (1) The commission or any negotiating tribe or federal agency may terminate negotiations by providing notice to all parties 30 days in advance of the termination date. On the termination date, the suspension of the application of part 2 provided for in 85-2-217 also terminates. The tribe or federal agency shall file all of its claims for reserved rights within 24 months of the termination of negotiations.

(2) Once negotiations have been terminated pursuant to subsection (1), they may be reopened only by mutual agreement of the parties.

History: **En. Sec. 27, Ch. 697, L. 1979; amd. Sec. 9, Ch. 268, L. 1981; amd. Sec. 7, Ch. 667, L. 1985; amd. Sec. 3, Ch. 5, L. 2009.**

85-2-705. Status reports to chief water judge. (1) The Montana reserved water rights compact commission must submit to the chief water judge, appointed pursuant to 3-7-221, a report on the status of its negotiations on July 1, 1985, and every 6 months thereafter.

(2) Each report must state which Indian tribes and federal agencies are engaged in negotiations, whether any negotiations with Indian tribes or federal agencies have been terminated, and the progress of negotiations on a tribe-by-tribe and agency-by-agency basis. The report must be made available to the public.

History: **En. Sec. 8, Ch. 667, L. 1985.**

85-2-706. Renumbered 85-20-401. Code Commissioner, 1994.

85-2-707. Renumbered 85-20-402. Code Commissioner, 1994.

85-2-708. Water administration interim agreements within Indian reservations. (1) Because it appears to be to the common advantage of the state and Indian tribes to cooperate in matters involving the permitting and use of water within the exterior boundaries of an Indian reservation prior to the final adjudication of Indian reserved water rights and because the state does not intend by enactment of this section to limit, expand, alter, or waive state jurisdiction to administer water rights within the exterior boundaries of an Indian reservation, pursuant to the requirements of Title 18, chapter 11, the department may negotiate and conclude an interim agreement with the tribal government of any Indian tribe in Montana prior to final adjudication of Indian reserved water rights for the purpose of implementing a water administration plan and a permitting process for the issuance of water rights and changes in water right uses within the exterior boundaries of an Indian reservation.

(2) Subject to subsection (4), an agreement entered into pursuant to subsection (1) must:

(a) provide for the retention of exclusive authority by the state to issue permits to applicants who are not members of the tribe and to issue change of use authorizations;

(b) provide that any permits must be issued in accordance with the criteria established by state law; and

(c) provide that permits may be only for new uses with a date of priority in compliance with state law.

(3) Prior to concluding any agreement under this section, the department shall hold public meetings, after proper public notice of the meetings has been given and the proposed agreement has been made available for public review, to afford the public an opportunity to comment on the contents of the agreement.

(4) The provisions of subsection (2) do not apply if a court of competent jurisdiction has held that the department lacks exclusive authority to issue new water use permits within the exterior boundaries of an Indian reservation pending final adjudication of Indian reserved water rights. In that case, the department, with the approval of the governor, may enter into an interim agreement that provides for joint tribal and state administration of new water uses on the reservation pending final adjudication of Indian reserved water rights. Any interim agreement entered into pursuant to this subsection (4):

(a) must address how and whether new ground water uses for domestic and municipal purposes will be granted. Except for the criterion in 85-2-311(1)(a)(ii), an interim agreement that grants new ground water uses must establish criteria for new water uses that incorporate the criteria listed in 85-2-311.

(b) must address how and whether changes in existing appropriation rights within the exterior boundaries of the reservation will be granted. An interim agreement that grants changes must establish criteria for changes in existing appropriation rights that incorporate the criteria listed in 85-2-402.

(c) must address how and whether water use will be authorized under the interim agreement and how the use will be secure and valid in the event of the termination of the interim agreement, quantification of reserved water rights, or termination of negotiations of reserved water rights under 85-2-704;

(d) must maintain the jurisdictional claims of each party to the interim agreement;

(e) must protect each party against a waiver of the right to challenge the claims of each party at any time;

(f) may not prejudice the regulatory or adjudicatory jurisdiction of either party;

(g) must provide that none of the activities of each party in the negotiation or implementation of an interim agreement may be used to affect the equitable or legal position of either party in any future litigation; and

(h) must provide that nothing in the negotiation or implementation of an interim agreement may be considered as enlarging or diminishing the jurisdiction or authority of either party within the reservation.

History: En. Sec. 19, Ch. 497, L. 1997; amd. Sec. 1, Ch. 483, L. 2003.

Part 8
Diversions From the Yellowstone River Basin

85-2-801. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Basin" means the Yellowstone River basin.

(2) "Compact" means the Yellowstone River Compact provided for in 85-20-101.

History: En. Sec. 1, Ch. 581, L. 1981.

85-2-802. Authority to approve diversions. The department may consent on behalf of the state of Montana to diversions of water from the basin pursuant to Article X of the compact, including diversions of water allocated under the terms of the compact to the other signatory states of Wyoming and North Dakota.

History: En. Sec. 2, Ch. 581, L. 1981.

85-2-803. Legislative review. (1) A diversion of water from the basin pursuant to Article X of the compact consented to by the department under the provisions of this part may not be made until one of the following occurs, whichever is later:

(a) the legislature ratifies the first determination of the department to consent to a diversion of water from the basin pursuant to Article X of the compact; or

(b) July 1, 1983.

(2) A decision by the department to disapprove a diversion of water is not subject to legislative approval.

History: En. Sec. 3, Ch. 581, L. 1981.

85-2-804. Application — notice — objections — hearing. (1) An appropriator proposing to divert from the basin water allocated to Montana under the terms of the compact or divert from the basin unallocated compact water within Montana shall file an application with the department. The application must state the name and address of the applicant and facts tending to show that:

(a) the diversion and ultimate use of the water in Montana is for a beneficial use of water;

(b) the diversion and ultimate use of water will not adversely affect the water rights of other persons;

(c) the proposed means of diversion, construction, and operation are adequate;

(d) the diversion and ultimate use will not interfere unreasonably with other planned uses or developments for which a water right has been established or a permit has been issued or for which water has been reserved;

(e) the diversion and ultimate use of the water will not exceed the allocated share under the compact of any of the signatory states;

(f) the diversion and ultimate use of the water are in the public interest of Montana; and

(g) the applicant intends to comply with the laws of the signatory states to the compact.

(2) An appropriator proposing to divert from the basin water allocated to North Dakota or Wyoming under the terms of the compact or divert from the basin unallocated compact water within North Dakota or Wyoming shall file an application with the department. The application must state the name and address of the applicant and facts tending to show that:

(a) the proposed means of diversion, construction, and operation are adequate;

(b) the diversion and ultimate use of the water will not exceed the allocated share under the compact of any of the signatory states; and

(c) the applicant intends to comply with the compact.

(3) Notice of the proposed diversion must be given by the department in the same manner as provided in 85-2-307.

(4) An objection to an application must be filed by the date specified by the department in the notice.

(5) The objector to an application under subsection (1) shall state the objector's name and address and facts tending to show that:

(a) the diversion and ultimate use of the water in Montana are not for a beneficial use of water;

(b) the property, rights, or interests of the objector would be adversely affected by the proposed diversion or ultimate use of the water;

(c) the proposed means of diversion, construction, and operation are not adequate;

(d) the diversion and ultimate use will interfere unreasonably with the objector's planned uses or development for which the objector has a water right, a permit, or a reserved water right;

(e) the diversion and ultimate use of the water will exceed the allocated share under the compact of any signatory state; or

(f) the diversion and ultimate use of the water are not in the public interest of Montana.

(6) The objector to an application under subsection (2) shall state the objector's name and address and facts tending to show that:

(a) the property, rights, or interests of the objector would be adversely affected by the proposed diversion or ultimate use of the water;

(b) the proposed means of diversion, construction, and operation are not adequate; or

(c) the diversion and ultimate use of the water will exceed the allocated share under the compact of any signatory state.

(7) If the department receives an objection to an application, it shall hold a hearing on the application within 60 days from the date set by the department for filing objections. Service of notice of the hearing must be made by certified mail upon the applicant and the objector.

(8) The hearing must be conducted under the contested case procedures of the Montana Administrative Procedure Act in Title 2, chapter 4, part 6.

History: En. Sec. 4, Ch. 581, L. 1981; amd. Sec. 2766, Ch. 56, L. 2009; amd. Sec. 7, Ch. 251, L. 2009; amd. Sec. 2, Ch. 52, L. 2015.

85-2-805. Criteria for approval — terms. (1) The department may issue its approval of a diversion of water allocated to Montana under the terms of the compact or unallocated compact water diverted in Montana if:

(a) the diversion and the ultimate use of the water in Montana are for a beneficial use of water;

(b) the diversion and ultimate use of water will not adversely affect the water rights of other persons;

(c) the proposed means of diversion, construction, and operation are adequate;

(d) the diversion and ultimate use will not interfere unreasonably with other planned uses or developments for which a water right has been established or a permit has been issued or for which water has been reserved;

(e) the diversion and ultimate use of water will not exceed the allocated share under the compact of any of the signatory states;

(f) the diversion and ultimate use of the water are in the public interest of Montana; and

(g) the applicant signs an agreement to comply with the laws of the signatory states to the compact in constructing, operating, and maintaining all facilities associated with the diversion and ultimate use of the water.

(2) The department may approve a diversion of water allocated to North Dakota or Wyoming or unallocated compact water diverted in North Dakota or Wyoming if the diversion will not adversely affect the property, rights, or interests of an appropriator located in Montana and if the diversion and ultimate use of water will not exceed the allocated share under the compact of any of the signatory states.

(3) The department may approve a diversion subject to such terms, conditions, restrictions, and limitations as it considers necessary to meet the applicable criteria listed in subsection (1) or (2).

History: En. Sec. 5, Ch. 581, L. 1981.

85-2-806. Combined proceeding. The department, upon petition by the applicant, may consider and act upon any application for diversion of water from the basin filed pursuant to the provisions of this part in conjunction with proceedings involving the siting of a facility or associated facilities conducted under the provisions of Title 75, chapter 20, part 4, as amended, or in conjunction with any departmental proceeding involving the issuance of a permit or approval of a change conducted under Title 85, chapter 2, if in the opinion of the department consideration of both applications in the same proceeding will better enable the department to fulfill its functions, duties, and responsibilities under the provisions of Title 75, chapter 20, part 4, or Title 85, chapter 2, and this part. The department's consent to the diversion of Montana water out of the basin for ultimate use in a facility as defined in Title 75, chapter 20, must be contingent upon the department's issuance of a certificate for the facility in accordance with Title 75, chapter 20. The department's consent terminates 10 years after the date of issuance of the consent unless the department issues the certificate for the facility in accordance with Title 75, chapter 20, and approval of North Dakota and Wyoming is secured in accordance with Article X of the compact or unless consent is extended by the department.

History: En. Sec. 6, Ch. 581, L. 1981; amd. Sec. 467, Ch. 418, L. 1995.

85-2-807. Department authorized to appear in administrative and legal proceedings. The department may appear on behalf of the state of Montana in proceedings before the legislatures and administrative agencies of the other signatory states to the compact and in legal proceedings commenced in federal or state court within the other signatory states involving the consent of such signatory states to diversions of water from the basin under Article X of the compact and any other laws or rules of such signatory states applicable to such diversions to the extent necessary to protect the interests and the citizens of Montana in those proceedings.

History: En. Sec. 7, Ch. 581, L. 1981.

Part 9
Ground Water Assessment

Part Cross-References

Ground Water Assessment Steering Committee, 2-15-1523.
The Montana Resource Indemnity Trust and Ground Water Assessment Act, 15-38-101.
Water well contractors — annual renewal — fee — revocation for nonrenewal, 37-43-307.
Application for permit — fee, 85-2-302.

85-2-901. Short title. This part may be cited as the "Montana Ground Water Assessment Act".

History: En. Sec. 1, Ch. 769, L. 1991.

85-2-902. Findings and purpose. (1) The legislature finds that:

(a) Montana's citizens depend on ground water for a variety of uses, including domestic, agricultural, industrial, irrigation, mining, municipal, power, and recreation, and for maintenance of ecosystems and surface water supplies;

(b) ground water supplies and quality are threatened by a variety of contaminant sources;

(c) there is insufficient information characterizing the volume, quality, and flow patterns of the state's ground water;

(d) ground water information deficiencies are hampering the efforts of citizens and units of government to properly manage, protect, and develop ground water;

(e) government policies and programs should focus on preventing ground water contamination and supply depletion, but in order for preventive policies and programs to be effective, better ground water information is required; and

(f) there is a need for better coordination among those numerous units of state, federal, and local government with responsibility for ground water management, protection, and development.

(2) The purposes of this part are:

(a) to improve the quality of ground water management, protection, and development decisions within the public and private sectors by establishing a program to systematically assess and monitor the state's ground water and to disseminate the information to interested persons; and

(b) to improve coordination of ground water management, protection, development, and research functions among units of state, federal, and local government by establishing a ground water assessment steering committee.

History: En. Sec. 2, Ch. 769, L. 1991.

85-2-903. Definitions. As used in this part, the following definitions apply:

(1) "Aquifer" means a water-bearing, subsurface formation capable of yielding sufficient quantities of water to a well for a beneficial use.

(2) "Ground water assessment steering committee" means the committee established by 2-15-1523.

(3) "Ground water characterization program" means a program to systematically assess and document the hydrogeology and quality of the state's major aquifers.

(4) "Ground water characterization study" means the assessment of individual aquifers in specific areas within the state.

(5) "Ground water monitoring program" means a program to produce and maintain a long-term record of ground water chemistry and water level changes, based on information collected from a statewide network of observation wells.

History: En. Sec. 3, Ch. 769, L. 1991.

85-2-904 reserved.

85-2-905. Ground water assessment account. (1) There is a ground water assessment account within the special revenue fund established in 17-2-102. The Montana bureau of mines and geology is authorized to expend amounts from the account necessary to carry out the purposes of this part.

(2) The account may be used by the Montana bureau of mines and geology only to carry out the provisions of this part.

(3) Subject to the direction of the ground water assessment steering committee, the Montana bureau of mines and geology shall investigate opportunities for the participation and financial contribution of agencies of federal and local governments to accomplish the purposes of this part.

(4) There must be deposited in the account:

(a) at the beginning of each fiscal year, the proceeds from the resource indemnity and ground water assessment tax, as authorized by 15-38-106, and the interest earnings from the resource indemnity trust fund, as authorized by 15-38-202;

(b) funds provided by state government agencies and by local governments to carry out the purposes of this part; and

(c) funds provided by any other public or private sector organization or person in the form of gifts, grants, or contracts specifically designated to carry out the purposes of this part.

History: En. Secs. 4, 5, Ch. 769, L. 1991; amd. Sec. 2, Ch. 31, L. 1995; amd. Sec. 299, Ch. 42, L. 1997; amd. Sec. 6, Ch. 444, L. 1997; amd. Sec. 8, Ch. 552, L. 1999; amd. Sec. 14, Ch. 522, L. 2003; amd. Sec. 23, Ch. 432, L. 2007.

85-2-906. Ground water characterization program — ground water monitoring program. (1) There is a ground water characterization program and a ground water monitoring program.

(2) Subject to the direction of the ground water assessment steering committee, the Montana bureau of mines and geology shall establish and administer the ground water characterization program and the ground water monitoring program.

(3) The Montana bureau of mines and geology shall work with units of local government, ground water users, and other affected organizations and individuals in areas of the state that are included in a ground water characterization study and, if warranted by the level of local interest in a ground water characterization study, shall establish a local ground water assessment advisory committee.

(4) The ground water assessment steering committee created by 2-15-1523 shall:

(a) oversee expenditures from the ground water assessment account and organization plans and work plans proposed by the Montana bureau of mines and geology to implement the ground water characterization and ground water monitoring programs, including plans for local involvement and participation in ground water characterization studies;

(b) approve ground water monitoring sites;

(c) prioritize and select ground water characterization study areas;

(d) develop plans for ground water information management and dissemination;

(e) develop plans for integrating existing ground water information with information collected under the programs created by subsection (1);

(f) coordinate ground water information collection projects sponsored by individual units of state, federal, or local government with the programs created by subsection (1); and

(g) evaluate reports and other information produced by the Montana bureau of mines and geology from ground water characterization studies.

(5) The ground water assessment steering committee shall invite representatives of local governments and Indian tribes with jurisdiction over areas of the state that are included in an active ground water characterization study or in a study scheduled to begin in the ensuing biennium, as well as affected citizens in these areas, to participate in steering committee meetings.

History: En. Sec. 6, Ch. 769, L. 1991.

85-2-907. Ground water information collection by local governments. Units of local government may conduct ground water information collection projects in advance of ground water characterization studies conducted under the program created by 85-2-906(1). Local governments shall consult with the Montana bureau of mines and geology in designing local ground water information collection projects and studies and, subject to local funding availability, shall conduct the local projects and studies to produce information that is compatible with the type of information produced by the ground water characterization program.

History: En. Sec. 7, Ch. 769, L. 1991.

Part 10
Surface Water Assessment and Monitoring Program

85-2-1001. Surface water assessment and monitoring program — steering committee. (1) The Montana bureau of mines and geology shall develop and implement a surface water assessment and monitoring program for the purpose of collecting and compiling surface water information. The bureau shall gather data, compile existing information, conduct field studies, and prepare a detailed hydrogeologic assessment report for each subbasin. The bureau shall develop a monitoring plan and a hydrogeologic model for each subbasin for which a report is prepared.

(2) (a) There is a surface water assessment and monitoring program steering committee consisting of:

(i) an employee of each of the following state agencies that have responsibility for surface water protection, management, or information who is appointed by the head of the respective state agency:

(A) the department of natural resources and conservation;

(B) the department of environmental quality;

(C) the department of agriculture; and

(D) the Montana state library, natural resource information system; and

(ii) at least one representative of tribal governments in Montana, appointed by the governor.

(b) The committee may include representatives of the following agencies and units of government with expertise or management responsibility related to surface water:

(i) the legislative services division;

(ii) the board of oil and gas conservation;

(iii) the Montana bureau of mines and geology;

(iv) a soil and water conservation district;

(v) a unit of the Montana university system, other than the Montana bureau of mines and geology, appointed by the board of regents of higher education for the university system;

(vi) a county government, appointed by an organization of Montana counties;

(vii) a city, town, or city-county government, appointed by an organization of Montana cities and towns; and

(viii) each principal federal agency that has responsibility for surface water protection, management, or research, appointed by the Montana head of the respective federal agency.

(c) The committee may include one representative of each of the following organizations and groups, appointed by the governor, to serve as ex officio members:

(i) agricultural water users;

(ii) industrial water users;

(iii) a conservation or ecological protection organization; and

(iv) the development community.

(3) The steering committee shall prioritize subbasins for investigation based on current and anticipated growth of agriculture, industry, housing, and commercial activity. Permit applications for the development of surface water or ground water and the timing of the adjudication of water rights may be taken into account when prioritizing subbasins.

(4) The steering committee shall elect a presiding officer from its voting members.

(5) The Montana bureau of mines and geology shall provide staff support to the steering committee.

History: En. Sec. 1, Ch. 361, L. 2017.

CHAPTER 3
ATMOSPHERIC WATER
WEATHER MODIFICATION

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Part 1

General Provisions

85-3-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(2) "Operation" means the performance of weather modification and control activities entered into for the purpose of producing or attempting to produce a certain modifying effect within one geographical area over one continuing time interval, not exceeding 1 year.

(3) "Research and development" means theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(4) "Weather modification and control" means changing or controlling or attempting to change or control, by artificial methods, the natural development of atmospheric cloud forms or precipitation forms that occur in the troposphere.

History: (1), (2), (4), (5)En. Sec. 1, Ch. 20, L. 1967; amd. Sec. 1, Ch. 368, L. 1973; amd. Sec. 140, Ch. 253, L. 1974; Sec. 89-310, R.C.M. 1947; (3)En. Sec. 10, Ch. 20, L. 1967; amd. Sec. 5, Ch. 460, L. 1977; Sec. 89-319, R.C.M. 1947; R.C.M. 1947, 89-310, 89-319(2); amd. Sec. 468, Ch. 418, L. 1995.

85-3-102. Standards for research in weather modification control. The department may establish by rule standards and instructions to govern the carrying out of research and development or projects in weather modification and control as it considers necessary or desirable to minimize danger to health, safety, welfare, or property.

History: En. Sec. 3, Ch. 368, L. 1973; amd. Sec. 141, Ch. 253, L. 1974; R.C.M. 1947, 89-312.1; amd. Sec. 469, Ch. 418, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

85-3-103. Department powers. In addition to any other acts authorized by law, the department may:

(1) acquire materials, equipment, and facilities as are necessary to perform its duties under this chapter;

(2) receive any funds which may be offered or become available from federal grants or appropriations, private gifts, donations, bequests, or any other source and unless their use is restricted, expend the funds for the administration of this chapter;

(3) make such studies and investigations and obtain such information as the department may deem necessary in exercising its authority in the administration or enforcement of this chapter;

(4) cooperate with public or private agencies in the performance of the department's functions or duties and in furtherance of the purposes of this chapter;

(5) represent the state in any and all matters pertaining to plans, procedures, or negotiations for interstate compacts relating to weather modification and control;

(6) enter into cooperative agreements with the United States government or any of its agencies, with the various counties and cities of this state, or with any private or public agencies for conducting weather modification or cloud seeding operations;

(7) act for and represent the state and the counties, cities, and private or public agencies in contracting with private concerns for the performance of weather modifications or cloud seeding operations; and

(8) conduct and make arrangements, including contracts and agreements, for the conduct of research and development activities relating to:

(a) the identification and evaluation of meteorological, environmental, ecological, agricultural, economic, hydrological, and sociological impacts of weather modification in Montana;

(b) the theory and development of methods of weather modification and control, including processes, materials, and devices relating thereto;

(c) the utilization of weather modification and control for agricultural, industrial, commercial, recreational, and other purposes;

(d) the protection of life and property during research and operational activities.

History: En. Sec. 3, Ch. 20, L. 1967; amd. Sec. 2, Ch. 368, L. 1973; R.C.M. 1947, 89-312.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

Conformity to federal regulations authorized, 85-1-222.

Department powers, 85-2-111.

85-3-104. Nonliability of state and agents for acts of private persons. This chapter may not be construed to impose or accept any liability or responsibility on the part of the state, the department, or any state officials or employees for any weather modification and control activities of any private person or group.

History: En. Sec. 21, Ch. 20, L. 1967; amd. Sec. 152, Ch. 253, L. 1974; R.C.M. 1947, 89-330; amd. Sec. 470, Ch. 418, L. 1995.

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.

85-3-105. Violation as misdemeanor and continuing violations. A person violating any provision of this chapter is guilty of a misdemeanor, and a continuing violation is punishable as a separate offense for each day during which it occurs.

History: En. Sec. 22, Ch. 20, L. 1967; R.C.M. 1947, 89-331.

Cross-References

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Misdemeanor — when no penalty specified, 46-18-212.

Part 2
Licenses and Permits

85-3-201. License and permit required for weather modification and control. A person may not engage in activities for weather modification and control except under and in accordance with a license and a permit issued by the department authorizing the activities.

History: En. Sec. 4, Ch. 20, L. 1967; R.C.M. 1947, 89-313; amd. Sec. 471, Ch. 418, L. 1995.

85-3-202. Department to review applications. (1) The department shall review all applications for weather modification activities. The department shall prepare a report and an environmental impact statement pursuant to Title 75, chapter 1, part 2. The report must contain information relative to all of the criteria applicable to issuance of a permit in 85-3-206. Prior to preparing the report, the department shall conduct at least one public meeting in the area affected by the proposed weather modification activity. The department's actual costs of conducting the public meeting, preparing the report, and preparing the environmental impact statement must be paid by the applicant.

(2) The department may provide by rule for exempting from the license and permit requirements of this chapter:

(a) research, development, and experiments by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations and their agents;

(b) laboratory research and experiments;

(c) activities of an emergency character for protection against fire, frost, sleet, or fog; and

(d) activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or preventing precipitation or hail.

History: En. Sec. 5, Ch. 20, L. 1967; amd. Sec. 4, Ch. 368, L. 1973; amd. Sec. 142, Ch. 253, L. 1974; R.C.M. 1947, 89-314; amd. Sec. 1, Ch. 611, L. 1993; amd. Sec. 472, Ch. 418, L. 1995.

Cross-References

Adoption of rules, Title 2, ch. 4, part 3.
Research programs — powers of university units, 20-25-108.

85-3-203. Licenses — qualifications of licensees. The license to engage in activities for weather modification and control must be issued, in accordance with procedures and subject to conditions the department may by rule establish to effectuate the provisions of this chapter, to applicants who demonstrate competence in the field of meteorology to the satisfaction of the department. If the applicant is an organization, these requirements must be met by the individual who will be in charge of the operation for the applicant.

History: En. Sec. 6, Ch. 20, L. 1967; R.C.M. 1947, 89-315; amd. Sec. 473, Ch. 418, L. 1995.

85-3-204. Licenses — term and renewal. The license shall be issued for a period to expire at the end of the calendar year in which it is issued and, if the licensee possesses the qualifications necessary for the issuance of a new license, shall upon application be renewed at the expiration of the period.

History: En. Sec. 7, Ch. 20, L. 1967; R.C.M. 1947, 89-316.

85-3-205. License or renewal fee. A license shall be issued or renewed only upon the payment to the department of $100 for the license or renewal.

History: En. Sec. 8, Ch. 20, L. 1967; amd. Sec. 143, Ch. 253, L. 1974; R.C.M. 1947, 89-317.

85-3-206. Permits — requirements and hearing. (1) The permits must be issued in accordance with procedures and subject to conditions that the department may by rule establish to effectuate this chapter.

(2) Within 30 days after completion of the report required under 85-3-202, the department shall hold a hearing under Title 2, chapter 4, part 6, to determine whether to grant, conditionally grant, or deny the application for a permit. The department may not grant or conditionally grant an application unless all requirements of this section are satisfied and the applicant establishes by a preponderance of the evidence that the following criteria have been met:

(a) the applicant is licensed pursuant to this chapter;

(b) sufficient notice of intention has been published;

(c) an applicant has furnished proof of financial responsibility in an amount to be determined by the department as required in 85-3-211;

(d) the fee for the permit has been paid as required in 85-3-212 and the department's costs incurred under 85-3-202 have been paid;

(e) the weather modification and control activities to be conducted have been determined by the department to be for the general welfare and the public good. That determination must be based on a finding of whether the operation:

(i) is reasonably conceived to improve water quantity or quality, reduce loss from weather hazards, provide economic benefits for the people of Montana, or advance scientific knowledge;

(ii) is designed to include adequate safeguards to minimize or avoid possible damage to the public health, safety, and welfare and to the environment; and

(iii) will adversely affect another operation for which a permit has been issued.

(3) The department may determine not to hold a public hearing only if after giving notice of a hearing, no person files a notice of intent to appear at the hearing to contest the issuance of a permit. If a hearing is not held, the department may grant or conditionally grant a permit based on the information contained in the application and the department's report.

(4) Costs incurred by the department in holding a hearing under subsection (2) must be paid by the applicant.

History: En. Sec. 9, Ch. 20, L. 1967; amd. Sec. 1, Ch. 214, L. 1973; amd. Sec. 5, Ch. 368, L. 1973; amd. Sec. 144, Ch. 253, L. 1974; amd. Sec. 1, Ch. 46, L. 1977; R.C.M. 1947, 89-318; amd. Sec. 2, Ch. 611, L. 1993; amd. Sec. 474, Ch. 418, L. 1995.

85-3-207. Separate permit for each operation. (1) Separate permits must be issued for each operation.

(2) If a permit is issued, the holder of the permit shall confine activities to the time and area limits set forth in the notice of intention, unless modified by the department. The permittee's activities must conform to any conditions imposed by the department. The permit may not be sold or transferred.

History: (1)En. Sec. 10, Ch. 20, L. 1967; amd. Sec. 5, Ch. 460, L. 1977; Sec. 89-319, R.C.M. 1947; (2)En. Sec. 11, Ch. 20, L. 1967; amd. Sec. 145, Ch. 253, L. 1974; amd. Sec. 2, Ch. 46, L. 1977; Sec. 89-320, R.C.M. 1947; R.C.M. 1947, 89-319(1), 89-320(part); amd. Sec. 475, Ch. 418, L. 1995.

85-3-208. Notice of intention to apply for permit. Before undertaking any weather modification and control activities, the applicant for a permit shall file with the department a notice of intention.

History: En. Sec. 11, Ch. 20, L. 1967; amd. Sec. 145, Ch. 253, L. 1974; amd. Sec. 2, Ch. 46, L. 1977; R.C.M. 1947, 89-320(part).

85-3-209. Notice of intention — contents. The notice of intention shall set forth at least the following:

(1) the name and address of the applicant;

(2) the nature, purpose, and objective of the intended operation and the person or organization on whose behalf it is to be conducted;

(3) the area in which and the approximate time during which the operation will be conducted;

(4) the area which is intended to be affected by the operation;

(5) the materials and methods to be used in conducting the operation.

History: En. Sec. 12, Ch. 20, L. 1967; R.C.M. 1947, 89-321.

85-3-210. Publication of notice of intention. (1) The department shall have the notice of intention, or that portion thereof including the items specified in 85-3-209, published at least once a week for 2 consecutive weeks in a newspaper having a general circulation and published within any county in which the operation is to be conducted and in which the affected area is located, or if the operation is to be conducted in more than one county or if the affected area is located in more than one county or is located in a county other than the one in which the operation is to be conducted, then in newspapers having a general circulation and published within each of the counties.

(2) The applicant shall reimburse the department for the costs of publication of the notice of intention.

History: En. Sec. 12, Ch. 20, L. 1967; amd. Sec. 146, Ch. 253, L. 1974; amd. Sec. 3, Ch. 46, L. 1977; R.C.M. 1947, 89-322.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

85-3-211. Proof of financial responsibility by applicant. Proof of financial responsibility may be furnished by an applicant by showing, to the satisfaction of the department, the applicant's ability to respond in damages for liability that might reasonably be attached to or result from the applicant's weather modification and control activities.

History: En. Sec. 14, Ch. 20, L. 1967; R.C.M. 1947, 89-323; amd. Sec. 300, Ch. 42, L. 1997.

85-3-212. Permit fee. The fee to be paid by each applicant for a permit must be equivalent to 1% of the estimated cost of the operation, the estimated cost to be computed by the department from the evidence available to it. The fee is due and payable to the department as of the date of issuance of the permit. However, if the applicant is able to give satisfactory security for the payment of the balance, the applicant may be permitted to commence the operation and a permit may be issued upon the payment of not less than 50% of the fee. The balance due must be paid within 3 months from the date of termination of the operation as prescribed in the permit.

History: En. Sec. 15, Ch. 20, L. 1967; amd. Sec. 1, Ch. 151, L. 1969; amd. Sec. 147, Ch. 253, L. 1974; R.C.M. 1947, 89-324; amd. Sec. 476, Ch. 418, L. 1995.

85-3-213. State special revenue fund. All license and permit fees and fines collected under this chapter, other than those collected in a justice's court, shall be deposited in the state special revenue fund for use by the department in the administration of this chapter or as appropriated by the legislature.

History: En. Sec. 16, Ch. 20, L. 1967; amd. Sec. 1, Ch. 151, L. 1969; amd. Sec. 148, Ch. 253, L. 1974; amd. Sec. 1, Ch. 147, L. 1975; R.C.M. 1947, 89-325; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 60, Ch. 557, L. 1987; amd. Sec. 6, Ch. 630, L. 1991.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Fund structure, 17-2-102.

85-3-214. Termination of licenses and permits. After notice to the licensee and a reasonable opportunity for a hearing, the department may modify, suspend, revoke, or refuse to renew any license or permit issued if it appears that the licensee no longer possesses the qualifications necessary, if it appears that the licensee has violated any of the provisions of this chapter, or, in the case of a modification, if it appears that it is necessary for the protection of the health or the property of any person.

History: En. Sec. 20, Ch. 20, L. 1967; R.C.M. 1947, 89-329; amd. Sec. 477, Ch. 418, L. 1995.

Part 3
Records

85-3-301. Records of operations maintained by licensees. A licensee shall keep and maintain a record of all operations conducted by the licensee under the license and each permit, showing:

(1) the method employed;
(2) type of equipment used;
(3) kinds and amounts of material used;
(4) times and places of operation of the equipment;
(5) names and addresses of all individuals participating or assisting in the operation;
(6) any other general information that the department may require.

History: En. Sec. 17, Ch. 20, L. 1967; amd. Sec. 149, Ch. 253, L. 1974; R.C.M. 1947, 89-326; amd. Sec. 2767, Ch. 56, L. 2009.

85-3-302. Reports of operations. The department shall require written reports, in a manner as it provides, of each operation for which a permit is issued. The department shall also require reports from any organization that is exempt from license and permit requirements as provided in 85-3-202.

History: En. Sec. 18, Ch. 20, L. 1967; amd. Sec. 150, Ch. 253, L. 1974; R.C.M. 1947, 89-327.

85-3-303. Records and reports open to public. The records and reports in the custody of the department shall be open for public examination.

History: En. Sec. 19, Ch. 20, L. 1967; amd. Sec. 151, Ch. 253, L. 1974; R.C.M. 1947, 89-328.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Public records, Title 2, ch. 6.

Part 4
County Weather Modification Authorities

Part Cross-References

Counties, Title 7, ch. 1, part 21.
County Commissioners, Title 7, ch. 4, part 21.

85-3-401. Definitions. As used in this part, the following definitions apply:

(1) "Authority" means a county weather modification authority established pursuant to 85-3-411 or 85-3-413 through 85-3-415.

(2) "Commissioner" means a county weather modification authority commissioner appointed pursuant to 85-3-411 or 85-3-413 through 85-3-415.

History: En. Sec. 1, Ch. 609, L. 1983.

85-3-402 through 85-3-410 reserved.

85-3-411. Weather modification authority created by petition — expiration — reinstatement. (1) Upon receipt of a valid petition signed by at least 51% of the qualified electors of a county, as determined by the vote cast for the office of governor at the preceding general election, a board of county commissioners may by resolution create a weather modification authority. The board of county commissioners shall appoint five residents of the county as weather modification authority commissioners from those names set forth in the petition and designated by the petitioners to be appointed commissioners. If any of the five candidates named in the petition to be appointed commissioner is unable or refuses for any reason to accept appointment as commissioner or is disqualified by not meeting residence requirements as an elector in the county, the board of county commissioners shall name an appointee to fill the position. Each commissioner shall serve a 5-year term of office. If a commissioner submits a resignation in writing to the board of county commissioners or becomes unable or disqualified for any reason after accepting office, the board of county commissioners shall name an appointee to fill the vacancy. The board of county commissioners may remove any commissioner from office whenever it appears, by competent evidence and after hearing, that the commissioner has been guilty of misconduct, malfeasance, crime in office, or gross incompetency. A vacancy occurring otherwise than by expiration of a term of office must be filled for the unexpired term.

(2) An authority created pursuant to this section expires 5 years after the date of the initial appointment of the commissioners. Any unexpended funds remaining in the name of the authority after all proper bills and expenses have been paid must be transferred into the county general fund by the officers of the authority on or before the 5-year termination date provided by this section. However, all unexpended funds remaining in the name of the authority after all proper bills and expenses have been paid must remain in the name of the authority if the board of county commissioners of the county by resolution creates a weather modification authority and all its powers in accordance with 85-3-414.

(3) Nothing in this section prevents renewal of an authority for another 5 years by petition of the qualified electors in the same manner as the initial authority was created.

(4) If more than one petition is filed with the board of county commissioners on or about the same time, the petition with the highest percentage of the qualified county electors voting for the office of governor at the preceding general election must be selected by the board of county commissioners. However, the petition with the highest percentage must have the signatures of at least 40% of the qualified electors in the county, and the total of all qualified electors signing all petitions filed must equal at least 60% of the qualified electors in the county. If the name of the same elector appears on two or more petitions, the name must be stricken from both petitions.

History: En. Sec. 2, Ch. 609, L. 1983; amd. Sec. 2768, Ch. 56, L. 2009.

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.
Notice and opportunity to be heard, Title 2, ch. 3, part 1.
Qualifications of voter, 13-1-111.

85-3-412. Petition content. (1) The petition for the creation of a weather modification authority and for appointment of commissioners must contain:

(a) a title with the heading "Petition for Creation of (insert name of county) Weather Modification Authority";

(b) the following paragraph: We, the undersigned qualified electors of (name of county), state of Montana, request that the (name of county) board of county commissioners create by resolution a (name of county) weather modification authority and appoint the following five qualified electors of the county to 5-year terms of office as commissioners for the (name of county) weather modification authority:

(Here insert the name and address of each proposed commissioner for the (name of county) weather modification authority.)

(c) the following paragraph: We, the undersigned qualified electors of the (name of county), state of Montana, are notified that the creation of the (name of county) weather modification authority and the appointment of its commissioners by the (name of county) board of county commissioners will grant the authority the power to certify to the board of county commissioners a mill levy tax upon the taxable value of all taxable property in the county for a weather modification fund. The tax is subject to 15-10-420. The weather modification fund must be used for weather modification activities as provided by 85-3-424. We, the undersigned, understand that the authority requested in this petition expires 5 years after the creation of the weather modification authority, except that the board of county commissioners may by resolution create a weather modification authority and all its powers, including the power to certify a tax levy as provided in 85-3-422, for one or more 5-year periods in accordance with 85-3-414.

(d) a heading, "Committee for Petitioners", followed by this statement: The following electors of (name of county), state of Montana, are authorized to represent and act for us and shall constitute the "Committee for the Petitioners" in the matter of this petition and all acts subsequent to this petition.

(2) All signatures to the petition must be numbered and dated by month, day, and year. The name must be written, with residence address and post-office address, including the county of residence.

(3) An affidavit must be attached to each petition and sworn to under oath before a notary public by the person circulating each petition, attesting to the fact that the person circulated the petition and that each of the signatures to the petition is the genuine signature of the person whose name it purports to be and that each person is a qualified elector in the county in which the petition was circulated.

History: En. Sec. 3, Ch. 609, L. 1983; amd. Sec. 240, Ch. 574, L. 2001.

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.
Qualifications of voter, 13-1-111.

85-3-413. Creation of authority by election. When a petition signed by not less than 20% of the qualified electors of the county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, requesting an election upon the establishment of a weather modification authority is presented to the board of county commissioners not later than 90 days prior to the next general election, the board of county commissioners shall submit the question to the electors of the county at the next general election. Upon approval by a majority of the votes cast, the board of county commissioners shall by resolution establish an authority as described in 85-3-411 with all powers set out in this part, including the power to certify a tax levy as provided by 85-3-422.

History: En. Sec. 8, Ch. 609, L. 1983.

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.
Times for holding general elections, 13-1-104.
Qualifications of voter, 13-1-111.

85-3-414. Creation of authority by resolution. (1) When an authority is about to expire, the board of county commissioners may by resolution authorize the creation of such weather modification authority and all its powers, including the power to certify a tax levy as provided by 85-3-422, for an additional 5-year period if the resolution authorizing the creation of such authority is adopted by the board of county commissioners before the date prescribed in the preceding resolution for its termination. Upon passing such resolution for the creation of the authority, the board of county commissioners shall appoint five commissioners to 5-year terms of office, subsequently filling vacancies in the manner prescribed by 85-3-411.

(2) The board may create the authority for subsequent 5-year periods by following the procedure provided in this section.

History: En. Sec. 6, Ch. 609, L. 1983.

Cross-References

General authority of County Commissioners, 7-5-2101.

85-3-415. Creation of authority by vote after resolution of county commissioners. The board of county commissioners of any county may, by resolution after a public hearing, submit the question of the creation of a weather modification authority to the electors of the county at the next countywide election. Upon approval by a majority of the votes cast, the board of county commissioners shall pass a resolution creating an authority as described in 85-3-411. Such an authority has all powers provided by this chapter, including the authority to levy a tax as provided by 85-3-422.

History: En. Sec. 10, Ch. 609, L. 1983.

Cross-References

Local election administration, Title 13, ch. 1, part 3.

85-3-416. Abolishment of authority by election. When a petition signed by not less than 20% of the qualified electors of the county, as determined by the vote cast for governor in the last preceding gubernatorial election, requesting an election upon the abolishment of an authority created pursuant to 85-3-413 or 85-3-414 is presented to the board of county commissioners not later than 90 days prior to the next general election, the board of county commissioners shall submit the question to the electors of the county at the next general election. Upon approval by a majority of the votes cast, the board of county commissioners shall abolish the authority as of December 31 following the election. All unexpended funds remaining in the name of the authority after all proper bills and expenses have been paid must be deposited in the general fund of the county.

History: En. Sec. 9, Ch. 609, L. 1983.

Cross-References

Times for holding general elections, 13-1-104.

85-3-417. Procedure for abolishment of authority by recall petition — petition form — disposition of funds. (1) After 51% of the qualified electors of a county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, petition the board of county commissioners of their county to recall the commissioners of an authority created pursuant to 85-3-411 and to abolish the authority, the board of county commissioners shall adopt a resolution recalling all commissioners of such authority and abolishing their offices and the authority until a weather modification authority is created by petition in accordance with 85-3-411.

(2) A recall petition must have a title with the heading "Recall Petition for the Abolishment of (insert name of county) Weather Modification Authority". The recall petition must incorporate a paragraph stating its purpose in clear language and must comply with all requirements prescribed in subsections (1)(d), (2), and (3) of 85-3-412 relating to petition content, committee for petitioners, petition details, affidavits, and persons circulating such petitions.

(3) If the board of county commissioners adopts a resolution recalling all commissioners of a weather modification authority and abolishing the authority, all unexpended funds remaining in the name of the authority, after all proper bills and expenses have been paid, must be transferred to the county general fund by the weather modification authority commissioners on the effective date of the resolution. If outstanding valid bills are unpaid after that date, the board of county commissioners may pay such obligations from money in the county general fund.

History: **En. Sec. 7, Ch. 609, L. 1983.**

Cross-References

Montana Recall Act, Title 2, ch. 16, part 6.

85-3-418 through 85-3-420 reserved.

85-3-421. Commissioners—compensation—meetings—officers—disbursements. (1) A commissioner may not receive compensation for the commissioner's services. Certificates of appointment must be filed with the county clerk and recorder.

(2) The powers of each authority are vested in its commissioners. A majority of the commissioners constitutes a quorum for the purpose of conducting the business of the authority, but action may not be taken by the authority except by an affirmative vote of not less than a majority of all the commissioners. A presiding officer, vice presiding officer, secretary, and treasurer must be elected from among the commissioners. An authority may delegate to one or more of its commissioners powers or duties that it considers proper.

(3) The secretary shall keep minutes of official meetings and shall include all official business, such as operations requested, and all authorizations for payment of weather modification authority funds.

(4) Disbursements authorized by the authority must be made by check signed by the presiding officer and the treasurer of the authority. Official policies must be entered into the minutes. An annual report must disclose funds received and expended, and a copy of the report must be filed with the county clerk and recorder. The annual report must be presented at a public meeting called for that purpose.

History: **En. Sec. 4, Ch. 609, L. 1983; amd. Sec. 2769, Ch. 56, L. 2009.**

Cross-References

Right of public participation in government, Art. II, sec. 8, Mont. Const.
Public participation in governmental operations, Title 2, ch. 3.

85-3-422. Tax certified by weather modification authority — disposition of proceeds. (1) The authority may certify annually to the board of county commissioners a tax on the taxable value of all taxable property in the county for a weather modification fund. Subject to 15-10-420, the tax may be levied by the board of county commissioners. The weather modification fund may be used only for weather modification activities as provided by 85-3-424. The tax certified by the authority is limited to the period of existence of the authority.

(2) The money in the weather modification fund must be invested to earn interest at the rate most advantageous to the fund, consistent with law and prudent business practice.

History: **En. Sec. 5, Ch. 609, L. 1983; amd. Sec. 151, Ch. 584, L. 1999; amd. Sec. 241, Ch. 574, L. 2001.**

Cross-References

Deposit and investment of public money, Title 7, ch. 6, part 2.
County taxation, Title 7, ch. 6, part 25.

85-3-423. County budget waived for first appropriation — conditions. If an emergency condition requiring prompt expenditure occurs immediately after an authority has been created by resolution of the board of county commissioners and after certification of a mill levy by the authority, the county commissioners may appropriate, from money not otherwise appropriated in the general fund, money necessary to carry out the provisions of this part.

History: **En. Sec. 11, Ch. 609, L. 1983; amd. Sec. 60, Ch. 278, L. 2001; amd. Sec. 242, Ch. 574, L. 2001.**

85-3-424. Declaration of emergency — hearing — determination of need for weather modification operation. (1) After receiving a petition requesting an operation to increase precipitation, initiate precipitation, or suppress hail and bearing the signatures of at least 50 registered electors of the county, the commissioners of an authority shall, within 15 days after receiving the petition, publish notice of a public hearing on the request at least once in a newspaper of general circulation published within the county and conduct the hearing.

(2) If after the hearing a majority of the commissioners finds that a weather emergency exists requiring such an operation, the authority may proceed with the activities needed to initiate and conduct the requested operation.

History: **En. Sec. 12, Ch. 609, L. 1983.**

Cross-References

Disaster and emergency services — intergovernmental cooperation, Title 10, ch. 3, part 2.

CHAPTER 4
RESERVED

CHAPTER 5
WATER COMMISSIONERS AND WATER MEDIATORS

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Part 1
Appointment and Duties

85-5-101. Appointment of water commissioners. (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, including temporary preliminary, preliminary, and final decrees issued by a water judge, it is the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least 15% of the water rights affected by the decree or at least 15% of the flow rate of the water rights affected by the decree, in the exercise of the judge's discretion, to appoint one or more commissioners. The commissioners have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates, permits, and changes in appropriation right issued under chapter 2 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected or at least 15% of the flow rate of the water rights affected and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may appoint a water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a temporary preliminary decree, preliminary decree, or final decree issued

under chapter 2 of this title, the judge of the district court may, upon application by both the department of natural resources and conservation and one or more holders of valid water rights in the source, appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department or any other owner of stored waters may petition the court to have stored waters distributed by the water commissioners appointed by the district court. The court may order the commissioner or commissioners appointed by the court to distribute stored water when and as released to water users entitled to the use of the water.

(4) At the time of the appointment of a water commissioner or commissioners, the district court shall fix their compensation, require a commissioner or commissioners to purchase a workers' compensation insurance policy and elect coverage on themselves, and require the owners and users of the distributed waters, including permittees, certificate holders, and holders of a change in appropriation right, to pay their proportionate share of fees and compensation, including the cost of workers' compensation insurance purchased by a water commissioner or commissioners. The judge may include the department in the apportionment of costs if it applied for the appointment of a water commissioner under subsection (2).

(5) Upon the application of the board or boards of one or more irrigation districts entitled to the use of water stored in a reservoir that is turned into the natural channel of any stream and withdrawn or diverted at a point downstream for beneficial use, the district court of the judicial district where the most irrigable acres of the irrigation district or districts are situated may appoint a water commissioner to equitably admeasure and distribute stored water to the irrigation district or districts from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under this chapter, limited only by the purposes of this subsection. A commissioner's compensation is set by the appointing judge and paid by each district and other users of stored water affected by the admeasurement and distribution of the stored water. In all other matters, the provisions of this chapter apply so long as they are consistent with this subsection.

(6) A water commissioner appointed by a district court is not an employee of the judicial branch, a local government, or a water user.

(7) A water commissioner who fails to obtain workers' compensation insurance coverage required by subsection (4) is precluded from receiving benefits under Title 39, chapter 71, as a result of the performance of duties as a water commissioner.

History: En. Sec. 1, Ch. 43, L. 1911; re-en. Sec. 7136, R.C.M. 1921; amd. Sec. 1, Ch. 125, L. 1925; re-en. Sec. 7136, R.C.M. 1935; amd. Sec. 1, Ch. 187, L. 1939; amd. Sec. 1, Ch. 231, L. 1963; amd. Sec. 39, Ch. 452, L. 1973; amd. Sec. 1, Ch. 51, L. 1975; R.C.M. 1947, 89-1001(1) thru (3), (5), (6); amd. Sec. 1, Ch. 444, L. 1979; amd. Sec. 1, Ch. 246, L. 1983; amd. Sec. 1, Ch. 468, L. 1989; amd. Sec. 7, Ch. 604, L. 1989; amd. Sec. 1, Ch. 179, L. 2003; amd. Sec. 37, Ch. 416, L. 2005; amd. Sec. 1, Ch. 92, L. 2007; amd. Sec. 1, Ch. 212, L. 2017.

Cross-References

Water Judges, Title 3, ch. 7, part 2.
Appointment of Water Commissioner after final decree, 85-5-407.
Apportionment of costs, 85-5-408.
Board power to provide sufficient water, 85-7-1907.

85-5-102. Appointment of chief commissioner. When the judge of the district court appoints two or more commissioners to admeasure and distribute the waters mentioned in 85-5-101, the judge may appoint one of them as chief commissioner and empower the chief commissioner to exercise direction and control over the other commissioners in the discharge of their duties. The judge may depose the person appointed as chief commissioner from that position and appoint another as chief commissioner whenever it appears to the judge that better service may be given to the water users by making the change.

History: En. Sec. 2, Ch. 43, L. 1911; re-en. Sec. 7137, R.C.M. 1921; re-en. Sec. 7137, R.C.M. 1935; R.C.M. 1947, 89-1002; amd. Sec. 2770, Ch. 56, L. 2009.

Cross-References

Appointment of Water Commissioners, 3-7-211, 85-5-101.

85-5-103. Oath and bond. Each water commissioner appointed by the court shall subscribe and file with the clerk of the district court an oath of office before commencing the discharge of duties as commissioner and shall file with the clerk a bond executed by the commissioner, with two or more sureties, in a sum that the judge of the court may designate, to ensure the faithful discharge of the commissioner's duties.

History: **En. Sec. 3, Ch. 43, L. 1911; amd. Sec. 1, Ch. 12, Ex. L. 1919; re-en. Sec. 7138, R.C.M. 1921; re-en. Sec. 7138, R.C.M. 1935; R.C.M. 1947, 89-1003; amd. Sec. 2771, Ch. 56, L. 2009.**

Cross-References

Oaths, Title 1, ch. 6.
General duties of Clerk of District Court, 3-5-501.
Suretyship, Title 28, ch. 11, part 4.

85-5-104. Term of office. A water commissioner holds office for the time during the irrigation season of each year that may be designated by the judge in the order making the appointment. The judge may fix the date of the commencement of the term and may, in in the judge's discretion or when requested in writing by at least three persons entitled to the use of the waters, change the term for closing of the commissioner's service.

History: **En. Sec. 4, Ch. 43, L. 1911; amd. Sec. 1, Ch. 116, L. 1921; re-en. Sec. 7139, R.C.M. 1921; re-en. Sec. 7139, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1955; R.C.M. 1947, 89-1004; amd. Sec. 2772, Ch. 56, L. 2009.**

Cross-References

Appointment of Water Commissioners, 3-7-211, 85-5-101.

85-5-105. Power and duty to distribute water. Upon the issuance of an order, the water commissioner or commissioners have authority and it is the commissioner's or commissioners' duty to admeasure and distribute to the users of water, as their interests may appear and be required, the stored and supplemental water stored and as released by the department of natural resources and conservation under provisions of Title 85, chapter 1, to be diverted into and through a stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply in the same manner and under the same rules as decreed water rights are admeasured and distributed. The water commissioner or commissioners and the owners and users of the stored and supplemental water are bound by and are subject to the provisions of this chapter. However, the admeasurements and distribution of the stored and supplemental water may not interfere with decreed water rights. The purpose of Title 85, chapter 5, parts 1 through 3, is to provide a uniform, equitable, and economical distribution of adjudicated, stored, and supplemental waters.

History: **En. Sec. 1, Ch. 43, L. 1911; re-en. Sec. 7136, R.C.M. 1921; amd. Sec. 1, Ch. 125, L. 1925; re-en. Sec. 7136, R.C.M. 1935; amd. Sec. 1, Ch. 187, L. 1939; amd. Sec. 1, Ch. 231, L. 1963; amd. Sec. 39, Ch. 452, L. 1973; amd. Sec. 1, Ch. 51, L. 1975; R.C.M. 1947, 89-1001(4); amd. Sec. 2773, Ch. 56, L. 2009.**

Cross-References

Priority, 85-2-401.
District Court supervision of water distribution, 85-2-406.

85-5-106. Maintenance and repair of ditches or systems. Upon written request of the owners of at least 51% of the water rights in any adjudicated ditch or single water system, the judge of the district court may empower the commissioner to maintain and keep in reasonable repair such water ditch or water system at the expense of the owners thereof, and for such purposes the commissioner shall have authority to enter and work upon any ditch, canal, aqueduct, or other source of conveying the waters affected by the decree and the right-of-way thereof and to visit, inspect, and adjust all headgates or other means of distribution of such waters.

History: **En. Sec. 6, Ch. 43, L. 1911; re-en. Sec. 7141, R.C.M. 1921; re-en. Sec. 7141, R.C.M. 1935; R.C.M. 1947, 89-1006.**

Cross-References

Board plan for acquisition and construction, 85-7-1901.
Entry upon land by Board or agent, 85-7-1903.

85-5-107. Record of distribution of water. (1) Each water commissioner shall keep a daily record, unless a different recording schedule is ordered by the district judge, of the amount of water distributed to each water user and shall file a summary of the record with the clerk of the court monthly or seasonally, at the discretion of the district judge during the judge's term of service. The report must show in detail the total amount of water distributed to each water user during the month or the season and the cost of distributing the water, based upon the water commissioner's or commissioners' daily salary, other costs of the water commissioner or commissioners approved by the district judge, and the proportionate amount of water distributed. When two or more water commissioners serve under the same decree or decrees by order of the judge, they may file a joint summary of their records with the clerk of the court, or the chief commissioner, if one has been appointed by the judge, may file a summary on behalf of all of them.

(2) If the district court judge determines that it is necessary to establish a billing cycle prior to a distribution season, as provided in 85-5-204, the report or reports must serve as the basis for the amounts billed.

History: **En. Sec. 9, Ch. 43, L. 1911; re-en. Sec. 7144, R.C.M. 1921; re-en. Sec. 7144, R.C.M. 1935; R.C.M. 1947, 89-1009; amd. Sec. 1, Ch. 305, L. 1983; amd. Sec. 1, Ch. 513, L. 2007.**

Cross-References

General duties of Clerk of District Court, 3-5-501.
Measurement of water, 85-2-103.
District Court supervision of water distribution, 85-2-406.

85-5-108. Authority and arrest power. For the purposes of carrying out the provisions of Title 85, chapter 5, parts 1 through 3, each commissioner appointed by the court has the authority to enter upon any ditch, canal, aqueduct, or other source for conveying the waters affected by the decree and to visit, inspect, and adjust all headgates or other means of distributing the waters and has the same powers as a sheriff or constable to arrest any person interfering with the distribution made by the commissioner, to be dealt with according to law.

History: **En. Sec. 8, Ch. 43, L. 1911; re-en. Sec. 7143, R.C.M. 1921; re-en. Sec. 7143, R.C.M. 1935; R.C.M. 1947, 89-1008; amd. Sec. 2774, Ch. 56, L. 2009.**

Cross-References

Arrest, Title 46, ch. 6.
Entry upon land by Board or agent, 85-7-1903.

85-5-109. Failure to perform duty as contempt of court. If a commissioner fails to perform any of the duties imposed upon the commissioner by the order of the judge of the district court, the commissioner is guilty of contempt of court.

History: **En. Sec. 7, Ch. 43, L. 1911; re-en. Sec. 7142, R.C.M. 1921; re-en. Sec. 7142, R.C.M. 1935; R.C.M. 1947, 89-1007; amd. Sec. 2775, Ch. 56, L. 2009.**

Cross-References

Contempts, Title 3, ch. 1, part 5.

85-5-110. Appointment of water mediators — duties. (1) Except as provided in 85-20-1902, the judge of the district court may appoint a water mediator to mediate a water controversy in a decreed or nondecreed basin under the following circumstances:

(a) upon request of the governor;

(b) upon petition by at least 15% of the owners of water rights in a decreed or nondecreed basin; or

(c) in the discretion of the district court having jurisdiction.

(2) A water mediator appointed under this section may:

(a) discuss proposed solutions to a water controversy with affected water right holders;

(b) review options related to scheduling and coordinating water use with affected water right holders;

(c) discuss water use and water needs with persons and entities affected by the existing water use;

(d) meet with principal parties to mediate differences over the use of water; and

(e) hold public meetings and conferences to discuss and negotiate potential solutions to controversies over use of water.

(3) If the governor requests or a state agency petitions for a water mediator, the governor or agency shall pay all or a majority of the costs of the water mediator as determined equitable by the district court having jurisdiction.

(4) The governor may use funds appropriated under 75-1-1101 to pay the costs of a water mediator.

(5) This section does not allow a water mediator to require any valid water right holder to compromise or reduce any of the holder's existing water rights.

(6) If an appropriator voluntarily ceases to use all or part of an appropriation right or voluntarily ceases to use an appropriation right according to its terms and conditions as a result

of the efforts of a mediator appointed under this section, the appropriator may not be considered to have abandoned all or any portion of the appropriation right.

History: En. Sec. 1, Ch. 625, L. 1989; amd. Sec. 1, Ch. 108, L. 1991; amd. Sec. 2776, Ch. 56, L. 2009; amd. Sec. 11, Ch. 294, L. 2015.

Cross-References

Environmental contingency account objectives, 75-1-1101.

85-5-111. Water commissioner and mediator education. (1) The department of natural resources and conservation, in cooperation with the Montana supreme court, the Montana water courts, the district courts of Montana, the Montana university system, and other appropriate state and federal agencies, shall develop an educational program for water commissioners and mediators that includes:

(a) an annual seminar on commissioner and mediator duties, mediation techniques, and water measuring techniques;

(b) preparation and, as necessary, revision of a water commissioner and mediator manual; and

(c) an outreach program that identifies persons who might serve as water commissioners or mediators.

(2) Unless a district court judge having jurisdiction determines otherwise, a water commissioner appointed pursuant to 85-5-101 shall complete at least one educational program as provided in subsection (1) prior to administering water.

History: En. Sec. 2, Ch. 625, L. 1989; amd. Sec. 1, Ch. 118, L. 2017.

Part 2
Charges and Expenses

85-5-201. Distribution of water and related expenses. (1) Each water commissioner appointed by the judge of the district court for the purpose of distributing water has the authority to determine the appropriate quantity and distribute to the parties interested, under a decree, permit, certificate, or change in appropriation right, the water to which those who are parties to the decree or holders of a permit, certificate, or change in appropriation right, or privy to a permit, certificate, or change in appropriation right, are entitled, according to their priority as established by the decree, permit, certificate, or change in appropriation right.

(2) The water commissioner may incur necessary expenses in the making of headgates or dams for the distribution of the waters if the parties fail or refuse to do so. Expenses associated with making headgates or dams for the distribution of water must be assessed against and paid by the party or parties for whom the ditch or ditches were repaired or the dams or headgates were made. In the discretion of the court, the costs or expenses may be assessed against the land upon which or for the benefit of which the expense had been incurred.

(3) (a) At the district court's discretion, a water commissioner may bill water users prior to the beginning of a distribution season for the purpose of offsetting costs associated with distributing water and water commissioner duties by submitting the information necessary for the billing to the clerk of the district court. A billing issued prior to the beginning of a distribution season:

(i) must be assessed on a per-user basis;

(ii) must be based on the report provided for in 85-5-107 for the prior year; and

(iii) may not exceed 80% of the amount that was provided to the district court pursuant to 85-5-107 for the prior distribution season on a per-user basis.

(b) Upon receipt of the information from the water commissioner, the clerk of district court shall proceed as provided in 85-5-204.

History: En. Sec. 5, Ch. 43, L. 1911; re-en. Sec. 7140, R.C.M. 1921; amd. Sec. 2, Ch. 125, L. 1925; re-en. Sec. 7140, R.C.M. 1935; R.C.M. 1947, 89-1005; amd. Sec. 2, Ch. 246, L. 1983; amd. Sec. 2, Ch. 92, L. 2007; amd. Sec. 2, Ch. 513, L. 2007.

Cross-References

Appointment of Water Commissioners, 3-7-211, 85-5-101.
Priority, 85-2-401.
Irrigation districts — indebtedness, bonds, and bankruptcy, Title 85, ch. 7, part 20.
Irrigation districts — taxes and assessments, Title 85, ch. 7, part 21.

85-5-202. Repair expenses. The judge may allow as a charge any expenses necessarily incurred by the water commissioner in the discharge of duties in the employment of extra labor for the repair of dams, headgates, ditches, or flumes when immediate action is necessary to preserve the rights of the parties entitled to the waters of a stream or when the judge has, in the order appointing the commissioner, required the commissioner to repair ditches and keep in repair necessary headgates, ditches, or flumes. The water commissioner shall report all expenses, and the cost must be taxed against the party or parties for whose benefit the expenses were incurred. In the discretion of the court, the costs or expenses may be assessed against the land upon which or for the benefit of which the expense had been incurred.

History: En. Sec. 10, Ch. 43, L. 1911; re-en. Sec. 7145, R.C.M. 1921; amd. Sec. 3, Ch. 125, L. 1925; re-en. Sec. 7145, R.C.M. 1935; R.C.M. 1947, 89-1010; amd. Sec. 2777, Ch. 56, L. 2009.

Cross-References

Board powers over district property, 85-7-1908.

85-5-203. Telephone expenses. The judge may also allow as a charge reasonable expenses incurred by a water commissioner in telephoning to the judge for instructions in cases of emergency. When there are two or more commissioners acting under the judge's order, reasonable expenses incurred in communicating with each by telephone or with the judge of the district court, in order to carry on the distribution of the waters harmoniously and in accordance with the decree, shall be deemed a necessary expense. These expenses shall be reported by the water commissioner or commissioners at the close of the season and shall be taxed against all the water users affected by the decree or decrees ratably in proportion to the whole amount of water distributed to them during the season.

History: En. Sec. 11, Ch. 43, L. 1911; re-en. Sec. 7146, R.C.M. 1921; re-en. Sec. 7146, R.C.M. 1935; R.C.M. 1947, 89-1011.

Cross-References

Water Judges, Title 3, ch. 7, part 2.

85-5-204. Apportionment of fees and expenses. (1) Upon the filing of the report by the water commissioner or water commissioners, the clerk of court shall notify by letter each person mentioned in the report:

(a) of the amount the water user is made liable for by the report;

(b) that objections to the report and the amount taxed against the water user may be made by any person interested in the report or the amount assessed against the water user within 20 days after the date of the mailing of the notice; and

(c) that, unless objections are filed, an order will be made by the judge of the district court finally fixing and determining the amount due from each of the water users.

(2) The affidavit of the clerk that the clerk has mailed a notice to each person mentioned in the report at the person's last-known post-office address, in the usual manner, must be considered prima facie evidence that the person received the notice provided for in this section.

(3) At the discretion of the district judge, the water commissioner may issue a bill prior to the beginning of a distribution season for the purpose of offsetting costs associated with distributing water and water commissioner duties by submitting the information necessary for the billing to the clerk of the district court. The bill for each water user may not exceed 80% of the amount that was provided to the district court pursuant to 85-5-107 for the prior distribution season.

(4) If the cost of distributing water during a distribution season is less than the amount that was collected through a bill issued prior to a distribution season, the water commissioner shall refund the money to the water user based on the amount of water that the water user received during the distribution season. The water commissioner shall submit a refund report, along with proof that any refunds were issued, to the clerk of district court for filing.

History: En. Sec. 12, Ch. 43, L. 1911; re-en. Sec. 7147, R.C.M. 1921; amd. Sec. 1, Ch. 11, L. 1923; amd. Sec. 1, Ch. 45, L. 1927; re-en. Sec. 7147, R.C.M. 1935; R.C.M. 1947, 89-1012; amd. Sec. 3, Ch. 513, L. 2007.

Cross-References

General duties of Clerk of District Court, 3-5-501.

85-5-205. Objections to expenses — hearing. At the expiration of the 20 days' notice, as provided for in the preceding section, if objections to said report have been filed or a motion to retax the same has been made, the court or judge shall fix a time for the hearing of such objections or motion to retax, which time of hearing shall be as soon as the judge or a court can conveniently hear the same. Any person objecting to said report shall be entitled to at least 5 days' notice of the date and time of such hearing. At such hearing the court or judge shall hear and determine the motion or objections and shall make an order fixing and determining the amount found due from each of said water users to such commissioner or commissioners. In case no objections are filed within the 20 days, as hereinbefore provided for, such order shall be made as a matter of course, and in either case said order shall be final determination of the matter.

History: **En. Sec. 13, Ch. 43, L. 1911; re-en. Sec. 7148, R.C.M. 1921; amd. Sec. 2, Ch. 11, L. 1923; re-en. Sec. 7148, R.C.M. 1935; R.C.M. 1947, 89-1013.**

85-5-206. Effect of order fixing fees. After the order of the court fixing the fees and compensation and expenses of the water commissioner is final, the order has the force and effect of a judgment against the person to whom the water was or will be distributed and for whose benefit it was used or will be used. When the expenses of a commissioner or commissioners has been assessed against the land for which the service of the commissioner or commissioners has been rendered, the assessment is a lien against the land. The lien has the same effect as a judgment. The lien may be executed in the same manner as a judgment upon order of the court. The water commissioner, at the water commissioner's discretion, may withhold further determinations of quantity or distribution of water to any person entitled to the water until the person has paid all fees, compensation, and expenses of the water commissioner or commissioners fixed by the court and apportioned and charged to the person, including bills sent prior to the beginning of a distribution season. The commissioner may withhold the determination of quantity and distribution of water from any land against which there exists any lien that is the result of lack of payment pursuant to this section until the lien has been fully discharged.

History: **En. Sec. 14, Ch. 43, L. 1911; re-en. Sec. 7149, R.C.M. 1921; amd. Sec. 4, Ch. 125, L. 1925; amd. Sec. 1, Ch. 39, L. 1929; re-en. Sec. 7149, R.C.M. 1935; R.C.M. 1947, 89-1014; amd. Sec. 4, Ch. 513, L. 2007.**

Cross-References

Appointment of Water Commissioners, 3-7-211, 85-5-101.
Execution of judgment, Title 25, ch. 13.
District Court supervision of water distribution, 85-2-406.

Part 3
Rights and Duties of Water Users

85-5-301. Complaint by dissatisfied user. (1) A person owning or using any of the waters of the stream or ditch or extension of the ditch who is dissatisfied with the method of distribution of the waters of the stream or ditch by the water commissioner or water commissioners and who claims to be entitled to more water than the person is receiving or to a right prior to that allowed the person by the water commissioner or water commissioners may file a written complaint, duly verified, setting forth the facts of the claim.

(2) Upon receipt of the complaint, the judge shall fix a time for the hearing of the petition and shall direct that notice be given to the parties interested in the hearing as the judge considers necessary. At the time fixed for the hearing, the judge shall hear and examine the complainant and other parties who appear to support or resist the claim and examine the water commissioner or water commissioners and witnesses regarding the charges contained in the complaint.

(3) Upon the determination of the hearing, the judge shall make findings and issue an order that the judge considers just and proper. If it appears to the judge that the water commissioner or water commissioners have not properly distributed the water according to the provisions of the decree, permit, certificate, or change in appropriation right, the judge shall give the proper instructions for distribution of the water.

(4) The judge may remove any water commissioner and appoint a new water commissioner if the judge determines that the interests of the parties in the waters mentioned in the decree, permit, certificate, or change in appropriation right will be best served by appointing a new water commissioner. If it appears to the judge that the water commissioner has willfully failed to perform the water commissioner's duties, the water commissioner may be proceeded against

for contempt of court, as provided in contempt cases. The judge shall make an order regarding the payment of costs of the hearing that the judge determines is just and proper.

History: En. Sec. 15, Ch. 43, L. 1911; re-en. Sec. 7150, R.C.M. 1921; amd. Sec. 5, Ch. 125, L. 1925; re-en. Sec. 7150, R.C.M. 1935; amd. Sec. 13, Ch. 460, L. 1977; R.C.M. 1947, 89-1015; amd. Sec. 3, Ch. 92, L. 2007.

Cross-References

Contempts, Title 3, ch. 1, part 5.
Appeals from final decree, 85-2-235.

85-5-302. Maintenance of headgates and measuring devices. All persons using water from any stream or ditch for which a water commissioner is appointed are required to have suitable headgates at the point where a ditch taps a stream and shall also, at some suitable place on the ditch and as near the head as practicable, place and maintain a proper measuring box, weir, or other appliance for the measurement of the waters flowing in the ditch. If a person fails to place or maintain a proper measuring appliance, it is the duty of the water commissioner not to apportion or distribute any water through the ditch. The commissioner shall notify all parties interested by certified mail or in person 1 week before making the annual repair or cleaning of a stream or ditch or performing necessary labor or expenses to divert water to a ditch. The sending of a certified letter to the last-known post-office address of any interested party is prima facie evidence of the fact that the party was duly notified. Any work in the way of repairing a ditch made necessary by an emergency may be done without notice when injury would result from a delay.

History: En. Sec. 7, Ch. 64, L. 1905; re-en. Sec. 4890, Rev. C. 1907; re-en. Sec. 7151, R.C.M. 1921; amd. Sec. 6, Ch. 125, L. 1925; re-en. Sec. 7151, R.C.M. 1935; R.C.M. 1947, 89-1016; amd. Sec. 4, Ch. 432, L. 1989; amd. Sec. 2778, Ch. 56, L. 2009.

Cross-References

Measurement of water, 85-2-103.
District Court supervision of water distribution, 85-2-406.
Conduction of water, 85-2-414.
Regulation, supervision, apportionment, and control of water distribution, 85-7-1922.

Part 4
Water Ditches Under Joint or Corporate Control

85-5-401. Determination of water rights between partners, tenants in common, and corporate stockholders. If a water ditch used for irrigating purposes is owned by a partnership, tenants in common, or corporation and there is any dispute between the respective owners, tenants in common, or stockholders respecting the use and division of the waters flowing in the ditch, any partner, tenant in common, or stockholder may commence an action in any court of competent jurisdiction to determine the rights of the respective parties to the use of the waters and may join in the petition a request for the appointment of a water commissioner to apportion and distribute the waters of the ditch according to the rights of the respective owners, tenants in common, or stockholders during the pendency of the action.

History: En. Sec. 1, Ch. 181, L. 1919; re-en. Sec. 7152, R.C.M. 1921; re-en. Sec. 7152, R.C.M. 1935; R.C.M. 1947, 89-1017; amd. Sec. 2779, Ch. 56, L. 2009.

Cross-References

Appointment of Water Commissioners, 3-7-211, 85-5-101.
Water Courts — jurisdiction, Title 3, ch. 7, part 5.
District Court supervision of water distribution, 85-2-406.
Duty of purchaser to dig ditches, 85-2-416.
Board agreements for joint operation or cooperation, 85-7-1905.

85-5-402. Appointment of commissioner prior to final decree. After the filing of the complaint in an action under 85-5-401, the court may, upon 5 days' notice to the other parties to the action, appoint a commissioner to divide and distribute the waters of the ditch to the respective parties, according to their respective rights, during the pendency of the action. The court may, upon good cause shown, appoint a commissioner without notice, and when a commissioner is appointed without notice, any party to the action may, on 5 days' notice to the plaintiff, move the court or judge to vacate the appointment or to modify the order as to the distribution of the waters of the ditch. The court or judge, on hearing, may affirm, vacate, or modify the order previously made. Each water commissioner appointed shall subscribe to an oath of office before commencing the discharge of duties.

History: Ap. p. Sec. 2, Ch. 181, L. 1919; re-en. Sec. 7153, R.C.M. 1921; re-en. Sec. 7153, R.C.M. 1935; Sec. 89-1018, R.C.M. 1947; Ap. p. Sec. 3, Ch. 181, L. 1919; re-en. Sec. 7154, R.C.M. 1921; re-en. Sec. 7154, R.C.M. 1935; Sec. 89-1019, R.C.M. 1947; R.C.M. 1947, 89-1018, 89-1019(part); amd. Sec. 2780, Ch. 56, L. 2009.

Cross-References

Appointment of Water Commissioners, 3-7-211, 85-5-101.
Final decree, 85-2-234.

85-5-403. Division of water. It shall be the duty of the water commissioner to divide the waters of said ditch between the owners, tenants in common, or stockholders in proportion to their respective rights, as set forth in the complaint or in such other manner or proportion as the court or judge may direct.

History: En. Sec. 3, Ch. 181, L. 1919; re-en. Sec. 7154, R.C.M. 1921; re-en. Sec. 7154, R.C.M. 1935; R.C.M. 1947, 89-1019(part).

Cross-References

District Court supervision of water distribution, 85-2-406.

85-5-404. Authority of commissioner. Such commissioner shall have authority to enter upon said ditch; open, close, and set headgates; and do whatever else is necessary to apportion and distribute the waters of said ditch to the respective parties according to their respective rights.

History: En. Sec. 4, Ch. 181, L. 1919; re-en. Sec. 7155, R.C.M. 1921; re-en. Sec. 7155, R.C.M. 1935; R.C.M. 1947, 89-1020.

Cross-References

Entry upon land by Board or agent, 85-7-1903.

85-5-405. Compensation and expenses. The court shall fix the compensation of the commissioner and the term of employment and shall make an order apportioning the amount of compensation among the several owners, tenants in common, or stockholders of the ditch, according to their respective rights and interest in the ditch. The amounts apportioned must be taxed as costs in the action against the respective parties.

History: En. Sec. 5, Ch. 181, L. 1919; re-en. Sec. 7156, R.C.M. 1921; re-en. Sec. 7156, R.C.M. 1935; R.C.M. 1947, 89-1021; amd. Sec. 2781, Ch. 56, L. 2009.

Cross-References

Appointment of Water Commissioners, 3-7-211, 85-5-101.

85-5-406. Interference with actions of commissioner. A person opening or closing a headgate after being set by the commissioner or who in any manner interferes with the commissioner in the discharge of the commissioner's duties is guilty of contempt of court and may be proceeded against for contempt of court as provided in contempt cases.

History: En. Sec. 6, Ch. 181, L. 1919; re-en. Sec. 7157, R.C.M. 1921; re-en. Sec. 7157, R.C.M. 1935; R.C.M. 1947, 89-1022; amd. Sec. 2782, Ch. 56, L. 2009.

Cross-References

Contempts, Title 3, ch. 1, part 5.

85-5-407. Appointment of water commissioner after final decree. When the rights of the respective parties in an action to the use of the waters flowing in a ditch are adjudicated, the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least 10% of the waters of the ditch, may, in the exercise of the judge's discretion, appoint a water commissioner to divide, apportion, and distribute the waters of the ditch to the respective parties according to their respective rights as set forth in the decree. When a commissioner is appointed under the provisions of this chapter to apportion and distribute the waters of the stream from which the water flowing in a ditch is taken, the commissioner shall, when directed by the judge or court, apportion and distribute the waters of the ditch according to the decree by which the rights of the respective owners were adjudicated.

History: En. Sec. 7, Ch. 181, L. 1919; re-en. Sec. 7158, R.C.M. 1921; re-en. Sec. 7158, R.C.M. 1935; R.C.M. 1947, 89-1023; amd. Sec. 301, Ch. 42, L. 1997.

Cross-References

Appointment of Water Commissioners, 3-7-211.
Appeals from final decree, 85-2-235.

85-5-408. Apportionment of costs. (1) When a commissioner is appointed upon the application of an owner or owners of a ditch, the court may fix the compensation of the commissioner and the term of the commissioner's employment. The court shall make an order apportioning the amount of compensation among the several owner or owners, tenants in common, or stockholders of the ditch according to their respective rights and interest. The order has the effect of a judgment against the person to whom the water was admeasured and for whose benefit it was used. When, in the discretion of the court, an order of apportionment of expense is made against the land for which the water was used, it has the effect of a lien against the land to which the apportionment was made. Execution may issue upon the order as upon a judgment by direction of the court, upon the application of any person interested in the order.

(2) When a commissioner is appointed under the provisions of this chapter to distribute the waters of the stream from which the waters flowing in a ditch are taken and to apportion and distribute the waters of the ditch according to the rights of the respective owners of the waters, the judge, in the judge's discretion, may, in addition to the apportionment taxed against the respective owners of the waters of the stream, apportion and tax the amount, if any, that the owners of the ditch shall pay in addition to the amount taxed under the provisions of this chapter.

History: En. Sec. 8, Ch. 181, L. 1919; re-en. Sec. 7159, R.C.M. 1921; amd. Sec. 7, Ch. 125, L. 1925; re-en. Sec. 7159, R.C.M. 1935; R.C.M. 1947, 89-1024; amd. Sec. 302, Ch. 42, L. 1997.

Cross-References

Execution of judgment, Title 25, ch. 13.
Apportionment of fees and expenses, 85-5-204.
Irrigation districts — taxes and assessments, Title 85, ch. 7, part 21.

CHAPTER 6
WATER USERS' ASSOCIATIONS

Part 1 — General Provisions

85-6-101. Power to levy new assessments.
85-6-102. Assessments to be equitable.
85-6-103. Transfer of shares of stock.
85-6-104. Assessment of shares of stock.
85-6-105. Division of irrigation project into districts.
85-6-106. Vacancies in board of directors.
85-6-107. Liability of associations.
85-6-108. Exemption from payment of fees.
85-6-109. Operation of projects with water users' association — definitions.

Part 1
General Provisions

85-6-101. Power to levy new assessments. Whenever any water users' association, having a contract with the United States government for construction of works and delivery of water and also a contract with its shareholders, organized under and by virtue of the corporation laws of this state and in conformity with the laws of the United States, shall have levied an assessment or assessments upon its capital stock, which assessment or assessments or any part thereof remain uncollected, such association shall have the power to discharge all assessments theretofore levied and to levy in lieu thereof an assessment which shall include all previous assessments levied upon the shareholders of said association and to give credit for all payments on assessments theretofore made.

History: En. Sec. 1, Ch. 141, L. 1917; re-en. Sec. 7160, R.C.M. 1921; re-en. Sec. 7160, R.C.M. 1935; R.C.M. 1947, 89-1101.

Cross-References

Corporations, Title 35, ch. 2, 14.
Exemption from license fee and license taxes, 85-6-108.
Irrigation districts — United States contracts, 85-7-2118, 85-7-2119.

85-6-102. Assessments to be equitable. All assessments authorized hereunder shall be equitable and be based upon benefits received or available.

History: En. Sec. 2, Ch. 141, L. 1917; re-en. Sec. 7161, R.C.M. 1921; re-en. Sec. 7161, R.C.M. 1935; R.C.M. 1947, 89-1102.

Cross-References

Irrigation districts — taxes and assessments, Title 85, ch. 7, part 21.
Drainage districts — taxes and assessments, Title 85, ch. 8, part 6.
Conservancy districts — assessments, 85-9-601.

85-6-103. Transfer of shares of stock. Shares of stock of water users' associations organized in conformity with the requirements of the laws of the United States and the state of Montana and under the Reclamation Act of June 17, 1902, (which shares of stock, by the articles of incorporation of said association, are inseparably appurtenant to the lands for which they are subscribed) shall, upon the presentation of proof to such association of the transfer of any of said land, be transferred on the books of said association, by the proper officers of the association, to the grantee or successor in title to said land.

History: En. Sec. 1, Ch. 29, L. 1915; re-en. Sec. 7162, R.C.M. 1921; re-en. Sec. 7162, R.C.M. 1935; R.C.M. 1947, 89-1103.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.
Securities regulation, Title 30, ch. 10.

85-6-104. Assessment of shares of stock. The assessable stock of any such water users' association may at the time of any assessment made, after the major portion of such irrigation project is completed and the irrigable area thereunder determined, be one share for each irrigable acre, and appropriate bylaws of the association may provide for the discharge of assessments levied on stock appurtenant to lands then determined to be nonirrigable.

History: En. Sec. 2, Ch. 29, L. 1915; re-en. Sec. 7163, R.C.M. 1921; re-en. Sec. 7163, R.C.M. 1935; R.C.M. 1947, 89-1104.

Cross-References

Irrigation districts — taxes and assessments, Title 85, ch. 7, part 21.
Drainage districts — taxes and assessments, Title 85, ch. 8, part 6.
Conservancy districts — assessments, 85-9-601.

85-6-105. Division of irrigation project into districts. Such water users' association shall be permitted to divide the area under such irrigation project into as many districts as there are directors provided for in its articles of incorporation. Each district shall elect one director for a term not to exceed 5 years. At the first election held to elect directors under the provisions of this chapter, each district shall elect one director, who shall hold office for such a term of years as the bylaws shall provide, and thereafter a director shall be elected in the district and at the annual election held just prior to the expiration of the term of office of the director of that district.

History: En. Sec. 3, Ch. 29, L. 1915; re-en. Sec. 7164, R.C.M. 1921; re-en. Sec. 7164, R.C.M. 1935; R.C.M. 1947, 89-1105.

Cross-References

Irrigation districts, Title 85, ch. 7.
Organization of districts, Title 85, ch. 7, part 15.
Elections, Title 85, ch. 7, part 17.

85-6-106. Vacancies in board of directors. In case of a vacancy in the board of directors from any cause, the board shall fill such vacancy by appointment to hold to the end of that fiscal year, and a director shall be elected at the annual election in the district where such vacancy occurs to fill the unexpired term of such vacancy.

History: En. Sec. 4, Ch. 29, L. 1915; re-en. Sec. 7165, R.C.M. 1921; re-en. Sec. 7165, R.C.M. 1935; R.C.M. 1947, 89-1106.

Cross-References

Irrigation districts — vacancies among Commissioners, 85-7-1703.

85-6-107. Liability of associations. An incorporated water users' association that is sustaining and responsible for the operations of a works is solely liable for any court action which may be brought against it for any injury or damages occurring on the works caused by a failure to maintain safe working and operating conditions. The state of Montana is not liable for injury to a person or property that occurs on a works as a result of a failure by a water users' association to maintain the works in a safe working and operating condition.

History: En. Sec. 11, Ch. 35, Ex. L. 1933; re-en. Sec. 349.12, R.C.M. 1935; amd. Sec. 1, Ch. 459, L. 1973; amd. Sec. 129, Ch. 253, L. 1974; amd. Sec. 3, Ch. 73, L. 1977; amd. Sec. 2, Ch. 460, L. 1977; R.C.M. 1947, 89-115(2).

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.
Liability, Title 27, ch. 1, part 7.

85-6-108. Exemption from payment of fees. Any water users' association organized in conformity with the requirements of the laws of the United States and of the state of Montana, under the Reclamation Act of June 17, 1902, which, under the articles of incorporation, is authorized to furnish water only to its stockholders shall be exempt from the payment of any license fee and from the payment of any annual license tax and, upon filing its articles of incorporation with the secretary of state, shall be required to pay only a fee of $40 for the filing and recording of such articles of incorporation and the issuance of certificate of incorporation.

History: En. Sec. 1, Ch. 66, L. 1905; re-en. Sec. 167, Rev. C. 1907; re-en. Sec. 147, R.C.M. 1921; re-en. Sec. 147, R.C.M. 1935; amd. Sec. 9, Ch. 117, L. 1961; R.C.M. 1947, 25-110; amd. Sec. 1, Ch. 326, L. 1979.

85-6-109. Operation of projects with water users' association — definitions. (1) As used in this section, the following definitions apply:

(a) "Association" means a water users' association.

(b) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(2) Whenever the department proposes a program of maintenance, repair, operation, or alteration of a project in excess of $25,000, the cost of which will be borne by an association pursuant to the terms of a water marketing contract, the association must be informed of the program and given an opportunity to comment. The department shall notify the association of its decision. If the association believes the program to be unnecessary or excessive in cost, it may appeal the department decision to the district court in any county where all or part of the project works is located.

(3) If an appeal is filed under subsection (2), the court shall hold a trial de novo on the question of necessity of the department program and the question of excessive costs. If the association prevails, the court may award costs to the association. The court may specify an acceptable program of maintenance, repair, operation, or alteration or may order the department and the association to develop a program, subject to court approval.

(4) Whenever a program of maintenance, repair, operation, or alteration is proposed, the department shall assist the association in attempting to secure sources of financing, including federal funds.

(5) Whenever the department proposes to abandon, sell, or otherwise dispose of a project that involves a water users' association, the department shall notify the association. Before the department may take further action to abandon, sell, or otherwise dispose of a project that involves a water users' association, the department must receive a petition approving the abandonment, sale, or disposition. The petition must be signed by stockholders of the association who represent 66⅔% or more of the issued and outstanding stock of the association. If, within 30 days of receipt of the final proposal of abandonment, sale, or other disposal, stockholders of the association who represent 30% or more of the issued and outstanding stock of the association file a petition of protest with the department, the project may not be abandoned, sold, or otherwise disposed of without the consent of the legislature.

History: En. 89-1107 by Sec. 1, Ch. 253, L. 1977; R.C.M. 1947, 89-1107; amd. Sec. 3, Ch. 156, L. 1981; amd. Sec. 2, Ch. 425, L. 1991; amd. Sec. 478, Ch. 418, L. 1995; amd. Sec. 303, Ch. 42, L. 1997; amd. Sec. 54, Ch. 535, L. 2021.

Cross-References

Management of property — water contracts, 85-1-211.

CHAPTER 7
IRRIGATION DISTRICTS

Part 1 — Creation of Districts — Generally

85-7-101. Creation of irrigation districts by percentage of titleholders.
85-7-102. Evidence of title.
85-7-103. Report by department of natural resources and conservation required.
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85-7-2205. Definition of irrigable land.
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Part 1
Creation of Districts — Generally

Part Cross-References

Definition of irrigable land, 85-7-2205.

85-7-101. Creation of irrigation districts by percentage of titleholders. (1) Sixty per centum in number of the holders of title or evidence of title to lands sought to be included in an irrigation district and which are susceptible of irrigation, such holders of title or evidence of title also representing 60% of the acreage of said lands, may propose the establishment and organization of an irrigation district under the provisions of this part and part 15. When any of such land sought to be included in such irrigation district is covered by mortgage or other lien, then the owner or owners of such land shall first procure the written consent of the holder of such mortgage or other lien before proposing the establishment and organization of such irrigation district.

(2) Irrigation districts may be formed in order to cooperate with the United States under the federal reclamation laws heretofore or hereafter enacted or under any act of congress which shall permit of the performance by the United States of work in this state for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation, or maintenance of constructed works or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands. When so organized, such district shall have the powers conferred or that may hereafter be conferred by law upon such irrigation district. In all irrigation districts organized in connection with United States reclamation projects, a majority of the holders of title or evidence of title to lands sought to be included in such irrigation district under the provisions of this part may propose the establishment and organization of such district.

History: En. Sec. 1, Ch. 146, L. 1909; amd. Sec. 1, Ch. 153, L. 1917; amd. Sec. 1, Ch. 116, L. 1919; re-en. Sec. 7166, R.C.M. 1921; amd. Sec. 1, Ch. 157, L. 1923; amd. Sec. 1, Ch. 112, L. 1925; re-en. Sec. 7166, R.C.M. 1935; amd. Sec. 15, Ch. 280, L. 1965; amd. Sec. 164, Ch. 253, L. 1974; R.C.M. 1947, 89-1201(1).

Cross-References

Federal assistance management, Title 17, ch. 3, part 1.
Mortgages of real property, Title 71, ch. 1, part 2.
Liens, Title 71, ch. 3.

Contracts with United States, 85-1-221.
Conformity to federal regulations authorized, 85-1-222.
Authority for joint operation of districts, 85-7-1601.
Requirements for petition to eliminate lands, 85-7-1803.
Creation of drainage districts, Title 85, ch. 8, part 1.

85-7-102. Evidence of title. (1) The following documents are sufficient evidence of title for the purpose of this chapter:

(a) the certificate of the county clerk and recorder;
(b) the certificate of the department of natural resources and conservation; or
(c) records of ownership prepared by licensed title insurance producers.

(2) When lands have been purchased from the state and part or all of the purchase money has been paid but the patents or deeds from the state to the lands have not been issued, the receipt or receipts held by the purchasers or the certificate of the department showing the payments on account of purchase is evidence of title to the lands under this chapter.

History: En. Sec. 1, Ch. 146, L. 1909; amd. Sec. 1, Ch. 153, L. 1917; amd. Sec. 1, Ch. 116, L. 1919; re-en. Sec. 7166, R.C.M. 1921; amd. Sec. 1, Ch. 157, L. 1923; amd. Sec. 1, Ch. 112, L. 1925; re-en. Sec. 7166, R.C.M. 1935; amd. Sec. 15, Ch. 280, L. 1965; amd. Sec. 164, Ch. 253, L. 1974; R.C.M. 1947, 89-1201(2); amd. Sec. 1, Ch. 382, L. 1987; amd. Sec. 59, Ch. 16, L. 1991; amd. Sec. 479, Ch. 418, L. 1995.

Cross-References

Documents subject to recording, 7-4-2613.
Real property — what may be recorded — recording copy in another county, 70-21-201.

85-7-103. Report by department of natural resources and conservation required. (1) Before any such district shall be established, there shall be presented to the district court, at the hearing on the petition for such establishment, a written report or opinion from the department of natural resources and conservation on the engineering features involved and the possibilities of water supplies, accompanied by a copy of the decree of the district court showing the adjudicated water rights in said streams from which said waters are to be diverted. For this purpose, a copy of the petition provided for in 85-7-104 and of all maps and other papers filed with the same shall be filed with the department at the time the original petition is filed with the clerk of the district court. The expense, if any, incurred by the department in the investigation and report upon the proposed district shall be certified with the report and shall be assessed as costs in said hearing, which costs shall be paid by the district in event of its establishment, and in event such petition be denied, then such costs shall be paid by the petitioners. The department shall, within a period of 120 days from the filing of said petition with the department, render its report, as herein provided, to the district court.

(2) Such report or opinion shall not be requested or obtained and shall not be necessary whenever it is proposed to cooperate with the United States under the federal reclamation laws heretofore or hereafter enacted or under any act of congress which shall permit of the performance by the United States of work in this state for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation, or maintenance of constructed works or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district laws.

History: En. Sec. 1, Ch. 146, L. 1909; amd. Sec. 1, Ch. 153, L. 1917; amd. Sec. 1, Ch. 116, L. 1919; re-en. Sec. 7166, R.C.M. 1921; amd. Sec. 1, Ch. 157, L. 1923; amd. Sec. 1, Ch. 112, L. 1925; re-en. Sec. 7166, R.C.M. 1935; amd. Sec. 15, Ch. 280, L. 1965; amd. Sec. 164, Ch. 253, L. 1974; R.C.M. 1947, 89-1201(3).

Cross-References

Department research and information, 75-5-212.
Aquatic ecosystem protections, Title 75, ch. 7.
Department powers over state waters, 85-1-204.
Final decree of water rights, 85-2-234.
Authority for joint operation of districts, 85-7-1601.
Withdrawal of lands to organize separate or consolidated district for cooperation with federal projects — petition, 85-7-1831.
Drainage districts, Title 85, ch. 8.

85-7-104. Petition for organization. (1) For the purpose of establishing and organizing an irrigation district hereunder, a petition signed by the required number of holders of title or evidence of title to lands within the proposed district mentioned in 85-7-101 shall be filed with the clerk of the district court of the county in which the greatest portion of the lands of the proposed district is located. The petition shall set forth:

(a) the name suggested for the proposed district;
(b) a general description of the lands to be included in the proposed district;
(c) the names of the holders of title or evidence of title to the lands in the proposed district, ascertained in the manner mentioned in 85-7-101 and 85-7-102, and if a holder is a nonresident of the county or counties in which the proposed district lies, the post-office address of the nonresident owner, if known;
(d) generally, the source from which the lands in the proposed district are to be irrigated and the character of the works, water rights, canals, and other property proposed to be acquired or constructed for irrigation purposes in the proposed district;
(e) a prayer that the lands embraced within the proposed district be organized as an irrigation district according to the applicable provisions of this chapter.

(2) The petition shall be accompanied by:
(a) a map or plat of the proposed district; and
(b) a good and sufficient bond or undertaking, to be approved by the district court or judge thereof of the county in which the petition is required to be filed under the provisions of subsection (1), to pay all costs in and about the proceedings preliminary to the organization of the district in the event that the organization is not effected.

(3) Mere error or omission in the description of any lands or in the names of any of the holders of title or evidence of title to lands does not render invalid any proceedings hereunder or deprive the district court of jurisdiction of the subject matter. Such misdescribed lands or misnamed persons may not be included in the district.

History: En. Sec. 2, Ch. 146, L. 1909; re-en. Sec. 7167, R.C.M. 1921; re-en. Sec. 7167, R.C.M. 1935; amd. Sec. 14, Ch. 460, L. 1977; R.C.M. 1947, 89-1202.

Cross-References

General duties of Clerk of District Court, 3-5-501.
Department powers over state waters, 85-1-204.

85-7-105. Order and notice of hearing on petition. (1) On such petition being filed, the district court or judge thereof shall make an order fixing the time and place of hearing on the petition and directing that notice thereof be given. Thereupon the clerk of said court shall cause to be published at least once a week for 2 successive calendar weeks in some newspaper published in the county where the petition is filed a copy of such petition, together with a notice stating the time and place fixed by the district court when and where the hearing on said petition will be had. If any portion of the lands within the proposed district lies within any other county or counties, then said petition and notice shall be published as above provided in a newspaper published in each such other county. If there be no newspaper published in such county, said petition and notice may be published in an adjoining county.

(2) The first publication of said petition and notice shall be not less than 30 days prior to the time mentioned in said notice for said hearing.

(3) If any holder of title or evidence of title to lands within the proposed district is a nonresident of the county or counties in which the proposed district lies, the clerk of said court shall, within 3 days after the first publication aforesaid, mail a copy of said petition and notice to each such nonresident whose post-office address is stated in said petition.

(4) The certificate of the clerk of the district court, under the seal of the court, as to the facts of the publishing and mailing of said petition and notice, affixed to a copy of said notice, shall be sufficient evidence of such facts.

History: En. Sec. 3, Ch. 146, L. 1909; re-en. Sec. 7168, R.C.M. 1921; re-en. Sec. 7168, R.C.M. 1935; R.C.M. 1947, 89-1203.

Cross-References

General duties of Clerk of District Court, 3-5-501.
Publication of legal notices, Title 18, ch. 7, part 2.

85-7-106. Hearing on petition. (1) At the time specified in the notice mentioned in 85-7-105, the district court in which the petition is filed shall hear the petition but may adjourn such hearing from time to time, not exceeding 3 weeks in all, and may continue the hearing for want of sufficient notice or other good cause. The court, upon application of the petitioners or any interested person or persons, shall permit the petition to be amended and may order further or additional notice to be given. Upon such hearing all interested persons whose lands or rights may be damaged or benefited by the organization of the district or by the irrigation works or improvements therein or to be acquired or constructed may appear and contest the necessity or utility of the proposed district or any part thereof, and the contestants and petitioners may offer any competent evidence in regard thereto.

(2) The court shall hear and determine whether the requirements of 85-7-101 through 85-7-105 have been complied with and for that purpose shall hear all competent and relevant testimony that may be offered.

History: En. Sec. 4, Ch. 146, L. 1909; amd. Sec. 2, Ch. 153, L. 1917; amd. Sec. 2, Ch. 116, L. 1919; re-en. Sec. 7169, R.C.M. 1921; re-en. Sec. 7169, R.C.M. 1935; amd. Sec. 15, Ch. 460, L. 1977; R.C.M. 1947, 89-1204(1), (2).

85-7-107. Court decision — appointment of commissioners. (1) (a) The court may make such changes in the proposed district as may be considered advisable or as fact, right, and justice may require. Land which is susceptible of irrigation from the same general source and by the same general system of works applicable to the other lands of the proposed district may not be excluded from the proposed district if the owner or owners of the lands file in the district court a written request that the lands be included.

(b) Lands which will not, in the judgment of the court, be benefited by irrigation from the works of the proposed district; which are already under irrigation; which have appurtenant water rights; or which can be irrigated from sources more feasible than the proposed district may not be included in the district unless the owner of such lands consents in writing to the inclusion.

(c) Notwithstanding the provisions of subsection (1)(b), whenever a district is formed to cooperate with the United States, lands previously irrigated and having appurtenant water rights may be included within the district boundaries if it appears to the court that the lands will be benefited by inclusion.

(d) All lands having appurtenant water rights, served by an irrigation works system supplying more than 10,000 acres, may, in the discretion of the court, be included in the proposed district upon petition by at least a majority, both in number and acreage, of the holders of title or evidence of title to the lands served by the irrigation system and having appurtenant water rights.

(e) Lands of the district need not be contiguous. The location of a particular tract in the proposed district is not a bar to exclusion.

(2) For purposes of including or excluding land from a proposed district, the court may subdivide any tract into 40-acre or smaller parcels.

(3) If, on final hearing, it is found by the court that the petition does not substantially comply with the requirements of this part or that the facts stated are not sustained by the evidence, the court shall dismiss the petition at the cost of the petitioners and make and enter an order to that effect. If it is found that the petition substantially complies with the requirements and that the facts stated are sustained by the evidence, the court shall make and enter an order:

(a) setting forth findings and allowing the petition;

(b) establishing the proposed district;

(c) giving accurate descriptions of the lands included within the proposed district;

(d) dividing the proposed district into three, five, or seven divisions, as may be advisable in view of the size of the district;

(e) appointing as commissioner one competent person for each division of the district having the qualifications as provided by 85-7-1501.

History: En. Sec. 4, Ch. 146, L. 1909; amd. Sec. 2, Ch. 153, L. 1917; amd. Sec. 2, Ch. 116, L. 1919; re-en. Sec. 7169, R.C.M. 1921; re-en. Sec. 7169, R.C.M. 1935; amd. Sec. 15, Ch. 460, L. 1977; R.C.M. 1947, 89-1204(3) thru (5).

Cross-References

Alteration and determination of district acreage, Title 85, ch. 7, part 18.

85-7-108. Effect of court findings and order. The finding and order are conclusive upon all the owners of lands within the district that they have assented to and accepted the applicable provisions of this chapter and are final unless appealed from to the supreme court within 60 days from the day of entry of the order. A copy of the order, duly certified to by the clerk of the district court, shall be filed for record within 30 days after the order is made and entered with the county clerk and recorder of the county where the lands included within the district are situated. Lands not situated in the county in which the copy is filed shall be omitted from the copy.

History: En. Sec. 4, Ch. 146, L. 1909; amd. Sec. 2, Ch. 153, L. 1917; amd. Sec. 2, Ch. 116, L. 1919; re-en. Sec. 7169, R.C.M. 1921; re-en. Sec. 7169, R.C.M. 1935; amd. Sec. 15, Ch. 460, L. 1977; R.C.M. 1947, 89-1204(6).

Cross-References

General duties of Clerk of District Court, 3-5-501.

85-7-109. Irrigation district as public corporation. Every irrigation district so established is a public corporation for the promotion of the public welfare, and the lands included therein shall constitute all the taxable and assessable property of such district for the purposes of this chapter.

History: En. Sec. 4, Ch. 146, L. 1909; amd. Sec. 2, Ch. 153, L. 1917; amd. Sec. 2, Ch. 116, L. 1919; re-en. Sec. 7169, R.C.M. 1921; re-en. Sec. 7169, R.C.M. 1935; amd. Sec. 15, Ch. 460, L. 1977; R.C.M. 1947, 89-1204(7).

Cross-References

Business corporations, Title 35, ch. 14.

Irrigation districts — taxes and assessments, Title 85, ch. 7, part 21.

85-7-110. Districts organized under earlier laws. Any irrigation district organized under the provisions of Chapter 70, Laws of 1907, and Chapter 16, Laws of 1909, shall be governed by the applicable provisions of this chapter. Whenever any irrigation district shall have already been organized under the provisions of said session laws and shall have issued bonds or entered into any contract of purchase or construction, nothing contained in this chapter shall be construed as affecting the rights of the holders of said bonds or of any person, persons, corporation, or association party or parties to any such contract with said district, under or by virtue of any of the provisions of said session laws. If a majority of the holders of title or evidence of title to lands included in the district heretofore organized under the provisions of said session laws (said holders of title or evidence of title, also representing a majority in acreage of irrigable lands of said district) shall petition under the provisions of this part for the organization of a new district, including not less than four-fifths of the irrigable lands embraced within such districts so organized, and shall pray for an order disorganizing such district and vacating all proceedings therein, the court shall have jurisdiction to proceed under this part and part 15 to organize such new district and, in making its final order creating such new district, shall also make an order vacating and disorganizing the old district. All money or property belonging to such old district shall be and become the money and property of such new district. Should any lands included in the old district not be included in the new district, the commissioners of the latter shall pay to the owner or owners of such land their just proportion thereof, on the basis of the last assessment made.

History: En. Sec. 67, Ch. 146, L. 1909; re-en. Sec. 7263, R.C.M. 1921; re-en. Sec. 7263, R.C.M. 1935; R.C.M. 1947, 89-2110(part).

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

Dissolution of districts, Title 85, ch. 7, part 10.

Part 2
Creation of Districts — Adjudicated Streams

85-7-201. Creation of districts by owners of water of adjudicated streams. It is the purpose and intention of this part, in the furtherance of public welfare, to provide an effective public agency for the improvement, development, and maintenance of certain existing irrigation systems in cases where administration thereof, through the agency of a water commissioner and the existing statutes, is not effective.

History: En. Sec. 1, Ch. 117, L. 1933; re-en. Sec. 7187.4, R.C.M. 1935; R.C.M. 1947, 89-1318.

85-7-202. Application of part. This part shall apply only when 20 or more owners of land with water rights appurtenant thereto are being served by one stream and its branches or from one source of water supply and in which the rights to the use of water shall have been determined by decree of a court of competent jurisdiction and at least 2,000 acres of land, contiguous in location or of reasonably compact area, are being served by the single stream or source.

History: En. Sec. 2, Ch. 117, L. 1933; re-en. Sec. 7187.5, R.C.M. 1935; amd. Sec. 20, Ch. 460, L. 1977; R.C.M. 1947, 89-1319.

Cross-References

Water Courts, Title 3, ch. 7.

85-7-203. Petition, hearing, and order. Whenever the owners of land and water rights, as described in 85-7-202, desire to organize for the purposes mentioned in this part, a petition to that effect, signed by not less than 60% of the individual landowners who represent not less than 51% of the irrigable acres to be affected by the proposed district and 51% of the cubic feet of water per second decreed or adjudicated in the stream from which the irrigation district is to operate, shall be filed with the clerk of the district court of the county or counties in which the district is to be created. For the purpose of determining whether the requirements of acreage and cubic feet of water per second have been met by the petition, water diverted from the adjudicated stream and distributed under irrigation districts other than the one to be created under this part may not be considered; however, such water and acreage shall be required to pay all assessments the same as other water and acreage affected by irrigation districts created under this part. Upon filing of the petition, the court shall set a date for a hearing on the petition and a written notice shall be mailed, not less than 5 days prior to the hearing, to each landowner or water right owner affected by the proposed district. If the court finds from such hearing that an irrigation district, as prayed for in the petition, is feasible and practical, the court shall issue an order creating the irrigation district. The order shall constitute the authority for the district to function for the purposes and intent as outlined in this part. The court shall appoint five commissioners who are landowners or water right owners affected by such district to act until the first annual meeting.

History: En. Sec. 3, Ch. 117, L. 1933; re-en. Sec. 7187.6, R.C.M. 1935; amd. Sec. 21, Ch. 460, L. 1977; R.C.M. 1947, 89-1320.

Cross-References

General duties of Clerk of District Court, 3-5-501.

85-7-204. Election of board of trustees. On the first Monday in March of each year after the creation of the district, a meeting of the water right owners of such district shall be called, time and place for such meeting to be published in at least two issues of the local paper prior to such meeting, and at such meeting a board of trustees of five members to serve for 1 year shall be elected by ballot.

History: En. Sec. 4, Ch. 117, L. 1933; re-en. Sec. 7187.7, R.C.M. 1935; R.C.M. 1947, 89-1321.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

85-7-205. Duty of trustees, levy, and indebtedness. The board of trustees may develop the source of supply; clean, improve, and develop the channel of the stream; and do and perform other work on the main distributing system as will be beneficial to the better distribution of the waters of the decreed water right stream and may cover the expenses of such work by levy. Whenever waters of the stream under the irrigation district created by this part are commingled with other waters or it is difficult to determine how many acres are irrigable by the water rights held in the stream, the acre basis of levy shall be determined by the number of cubic feet of water per second owned by such party or parties at the rate of .025 cubic feet of water per second to the acre. The board may not issue bonds or incur any indebtedness other than warrant indebtedness under the limitations imposed by law.

History: En. Sec. 5, Ch. 117, L. 1933; re-en. Sec. 7187.8, R.C.M. 1935; amd. Sec. 22, Ch. 460, L. 1977; R.C.M. 1947, 89-1322; amd. Sec. 1, Ch. 112, L. 1981.

Cross-References

The Natural Streambed and Land Preservation Act of 1975, Title 75, ch. 7, part 1.
Indebtedness, bonds, and bankruptcy, Title 85, ch. 7, part 20.

85-7-206. Basis and apportionment of annual tax. The annual tax levy and the apportionment and distribution of the total amount required to be raised in any year must be determined and imposed in accordance with 85-7-2104 and the provisions and limitations of law applicable to irrigation districts organized under the provisions of parts 1 and 15 of this chapter.

History: En. Sec. 6, Ch. 117, L. 1933; re-en. Sec. 7187.9, R.C.M. 1935; R.C.M. 1947, 89-1323; amd. Sec. 152, Ch. 584, L. 1999; amd. Sec. 8, Ch. 93, L. 2007.

Cross-References

Taxes and assessments of irrigation districts, Title 85, ch. 7, part 21.

85-7-207. Part not to conflict with other regulations. This part is not intended to conflict in any way with present statutes governing the appointment and duties of water commissioners on adjudicated water right streams or the operation of statutes as to the jurisdiction of courts over such commissioners and water rights and distribution of water under court decree but is for the sole purpose of making it possible for users of water out of decreed water right streams to improve the stream channel and conserve water in the best possible manner through the agency of an irrigation district, as provided for in this part.

History: **En. Sec. 7, Ch. 117, L. 1933; re-en. Sec. 7187.10, R.C.M. 1935; R.C.M. 1947, 89-1324.**

Cross-References

Water Courts, Title 3, ch. 7.

Appointment of Water Commissioners, 3-7-211, 85-5-101, 85-5-402, 85-5-407.

The Natural Streambed and Land Preservation Act of 1975, Title 75, ch. 7, part 1.

85-7-208. Dissolution of district. A district created under this part may be dissolved by court order upon proper hearing and in the same manner as this part provides for its creation.

History: **En. Sec. 8, Ch. 117, L. 1933; re-en. Sec. 7187.11, R.C.M. 1935; R.C.M. 1947, 89-1325.**

Cross-References

Dissolution of districts, Title 85, ch. 7, part 10.

Part 3
Creation of Districts
Common Water Supply

85-7-301. Creation of district by owners of rights in common water supply. (1) It is a purpose and intention of this part, in the furtherance of the public welfare, to provide an effective public agency for the improvement, development, operation, maintenance, and administration of certain existing irrigation systems in cases where administration thereof through the agency of a water commissioner is not effective.

(2) It is a purpose and intention of this part to extend to irrigation districts organized hereunder the powers, duties, and status of the public corporations organized under the irrigation district laws of the state of Montana, as the same may now or hereafter exist; provided, that neither such districts nor the board of commissioners thereof shall have any power or authority to issue bonds or incur indebtedness, other than warrant indebtedness, under the limitations proposed by law. This part does not contemplate the acquisition by the district of the existing water, water rights, or system or works owned by the respective water right owners within the district.

History: **En. Secs. 1, 8, Ch. 100, L. 1925; re-en. Secs. 7264.1, 7264.8, R.C.M. 1935; R.C.M. 1947, 89-2111, 89-2118.**

Cross-References

Business corporations, Title 35, ch. 14.

85-7-302. Application of part. This part shall apply only when more than 15 owners of land, with water rights appurtenant thereto, shall have diverted water by means of a single intake from the source of supply and shall have provided a single canal for conveying such water to the branches and laterals of an established irrigation system, serving at least 1,000 acres of land contiguous in location or of reasonably compact area and in which the rights to the use of the water shall have been determined by decree of a court of competent jurisdiction.

History: **En. Sec. 2, Ch. 100, L. 1925; re-en. Sec. 7264.2, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1943; R.C.M. 1947, 89-2112.**

85-7-303. Establishment of district. Whenever the owners of land and water rights, situated as described in 85-7-302, desire to organize for the purposes mentioned in this part, such owners may propose the establishment and organization of an irrigation district under the provisions of this chapter, except part 2, insofar as such laws are applicable hereto and not in conflict with the purposes and provisions of this part.

History: **En. Sec. 3, Ch. 100, L. 1925; re-en. Sec. 7264.3, R.C.M. 1935; R.C.M. 1947, 89-2113.**

85-7-304. Sections not applicable. The provisions of 85-7-1911(1) and (2), 85-7-1934, 85-7-1935, 85-7-1941 through 85-7-1943, 85-7-2001, 85-7-2011 through 85-7-2027, 85-7-2031, and 85-7-2032 do not apply to the organization of irrigation districts under this part.

History: **En. Sec. 4, Ch. 100, L. 1925; re-en. Sec. 7264.4, R.C.M. 1935; R.C.M. 1947, 89-2114; amd. Sec. 79, Ch. 130, L. 2005.**

85-7-305. Apportionment of water by commissioners. The board of commissioners shall apportion the water for irrigation among the lands of the district in a just and equitable manner and in compliance with the decree adjudicating the rights thereto, but the maximum amount apportioned to any land shall be the amount that can be beneficially used thereon.

History: **En. Sec. 5, Ch. 100, L. 1925; re-en. Sec. 7264.5, R.C.M. 1935; R.C.M. 1947, 89-2115.**

Cross-References

Priority, 85-2-401.

85-7-306. Development of water supply — levy for expenses. The board of commissioners of such irrigation district shall have authority to develop the source of supply and increase the means of distribution of water to the end that all owners of water rights under the system shall receive the amount of water which can be beneficially used upon their lands within the district. The board may levy against each irrigable acre of land in the district on account of administrative expenses, cost of maintenance and repairs, development of water supply, or enlargement of distribution facilities.

History: **En. Sec. 6, Ch. 100, L. 1925; re-en. Sec. 7264.6, R.C.M. 1935; R.C.M. 1947, 89-2116; amd. Sec. 2, Ch. 112, L. 1981.**

Cross-References

Beneficial use defined, 85-2-102.

85-7-307. Tax levy. Subject to 15-10-420, the annual tax levy and the apportionment and distribution of the total amount required to be raised in any year must be determined and imposed in accordance with the provisions and limitations of law applicable to other irrigation districts organized under parts 1 and 15 of this chapter.

History: **En. Sec. 7, Ch. 100, L. 1925; re-en. Sec. 7264.7, R.C.M. 1935; R.C.M. 1947, 89-2117; amd. Sec. 153, Ch. 584, L. 1999.**

Cross-References

Taxes and assessments, Title 85, ch. 7, part 21.

85-7-308. Validity of districts organized earlier. Any irrigation district which has been heretofore organized under procedure in substantial compliance with the provisions of this part shall, upon March 10, 1925, become a public corporation, with the privileges and powers hereby conferred, to the same extent as if such irrigation district were organized under the authority of this part.

History: **En. Sec. 9, Ch. 100, L. 1925; re-en. Sec. 7264.9, R.C.M. 1935; R.C.M. 1947, 89-2119.**

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

Part 4
Subdistricts

85-7-401. Authority to create subdistricts — petition — requirements. (1) The board of commissioners of an irrigation district created and organized under Title 85, chapter 7, parts 1 and 15, may establish one or more subdistricts within the irrigation district to provide for and finance the cost of irrigation works, including gravity irrigation systems, gravity measure systems, or sprinkling systems, that would irrigate lands in the subdistrict but not other lands in the district. A subdistrict may be established only upon a petition signed by at least 60%, in number and acreage, of the holders of title or evidence of title to lands to be included within the subdistrict. The petition must be addressed to and filed with the board of commissioners and be accompanied by a map or plat of the proposed subdistrict.

(2) The petition must state:

(a) the name suggested for the proposed subdistrict;

(b) a general description of the land to be included in the proposed subdistrict;

(c) the name of each holder of title or evidence of title to the lands in the proposed subdistrict, as determined according to 85-7-101 and 85-7-102 and, if a holder is a nonresident of the county or counties in which the proposed district lies, the post-office address of the nonresident owner, if known;

(d) the general water source from which the land in the proposed subdistrict will be irrigated and the general character of the works, water rights, canals, and other property proposed to be acquired or constructed for irrigation purposes in or for the benefit of the proposed subdistrict; and

(e) a request that the land within the proposed subdistrict be made a subdistrict according to the provisions of 85-7-401 through 85-7-404.

History: **En. Sec. 1, Ch. 439, L. 1989.**

85-7-402. Notice of hearing on petition to create subdistrict. (1) Upon the filing of a petition to create a subdistrict, the board of commissioners of the irrigation district shall by order fix the time and place for a hearing on the petition and shall direct that notice of the hearing be given.

(2) The notice of the hearing must state:

(a) the name of the proposed subdistrict and its purpose;

(b) the time and place of the hearing;

(c) a general description of the land proposed to be included in the subdistrict;

(d) a general description of the water source; and

(e) the general character of the works, water rights, canals, and other property proposed to be acquired or constructed in or for the benefit of the subdistrict.

(3) The board shall publish notice of the hearing at least once a week for 2 successive weeks in a newspaper published in each county in which the proposed subdistrict is located. The first publication must occur not less than 15 days before the date of the hearing.

(4) Notice of the hearing must also be mailed not less than 15 days before the date of the hearing to each holder of title or evidence of title to land within the proposed subdistrict. However, a defect in the notice or failure to give mailed notice does not affect the validity of the proceeding for the creation of a subdistrict under 85-7-401 through 85-7-404.

History: **En. Sec. 2, Ch. 439, L. 1989.**

85-7-403. Hearing on petition to create subdistrict. (1) The board of commissioners shall hear the petition at the time specified in the notice provided under 85-7-402. The board may adjourn the hearing for lack of sufficient notice or other good cause. The hearing must be completed within 3 weeks of the initial hearing.

(2) Upon application of the petitioners or any interested person or persons, the board shall allow the petition to be amended and may order that additional notice be given.

(3) At the hearing, any person whose land or property rights may be damaged or benefited by the creation of the subdistrict or by the irrigation works or improvements to be acquired or constructed in or for the benefit of the subdistrict may appear and submit oral or written testimony.

History: **En. Sec. 3, Ch. 439, L. 1989.**

85-7-404. Review of petition — creation of irrigation subdistrict. (1) After the hearing on the creation of the proposed subdistrict, the board of commissioners shall by resolution create the subdistrict if it finds that:

(a) the petition substantially complies with the provisions of 85-7-401; and

(b) it is in the best interests of the holders of title or evidence of title in the subdistrict and the district to establish the subdistrict.

(2) The board shall describe in the resolution the land to be included in the subdistrict. The land does not need to be contiguous but must be located within the district.

(3) In creating the subdistrict proposed by the petition, the board may alter the geographic area of the subdistrict or the scope or type of irrigation improvements to be undertaken in or for the benefit of the subdistrict, subject to the following conditions:

(a) The board may not include within the subdistrict land not identified by the petition as part of the proposed subdistrict unless notice and hearing on the addition are provided according to 85-7-402 and 85-7-403.

(b) The board may not exclude land from the proposed subdistrict if:

(i) the land can be irrigated from the same general source and by the same general system of works proposed for other land in the subdistrict; and

(ii) the owner or owners of the land file a written statement with the board requesting that the land be included in the subdistrict.

(c) The board shall exclude land from the proposed subdistrict if it determines that:

(i) the land will not benefit from irrigation obtained from the works of the proposed subdistrict; or

(ii) the land has appurtenant water rights or can be irrigated from sources more feasible than the proposed subdistrict and the owner or owners of the land have not filed a written statement with the board consenting to inclusion of the land in the subdistrict.

(4) For purposes of including or excluding land from a proposed subdistrict, the board of commissioners may subdivide any tract into 40-acre or smaller parcels.

(5) The creation of a subdistrict by the board of commissioners is conclusive on all owners of land within the subdistrict unless, within 30 days after adoption by the board of the resolution establishing the subdistrict, a holder of title or evidence of title to land within the subdistrict petitions the district court of the county in which the greater portion of the proposed subdistrict is located, for review of the creation of the subdistrict. Upon the timely filing of a petition for review of the creation of the subdistrict, the district court shall conduct a hearing and shall issue a decision in substantially the same manner required for review of a petition for an irrigation district under 85-7-105 through 85-7-108. The district court shall base its decision on whether the requirements of 85-7-401 through 85-7-403 and subsections (1) through (4) of this section have been met.

(6) A proceeding initiated in the district court for review of the validity of the bond issue or issues to finance the irrigation improvements to be undertaken in the subdistrict may be consolidated with a proceeding initiated under this section. Any indebtedness or liability incurred by the board of commissioners of the district with respect to or on behalf of a subdistrict, including bonds issued by the district, may not constitute a charge or lien on any land in the district except the land within the subdistrict.

History: En. Sec. 4, Ch. 439, L. 1989.

85-7-405 through 85-7-410 reserved.

85-7-411. Alteration and determination of subdistrict acreage. (1) Land may be deleted from or added to the subdistrict in the same manner provided for irrigation districts in 85-7-1801 through 85-7-1810.

(2) Land in a subdistrict that is deleted from an irrigation district remains in the subdistrict unless it is specifically deleted from the subdistrict according to subsection (1).

(3) The taxable area of the land in the subdistrict may be determined in the manner provided in 85-7-1841 through 85-7-1845.

History: En. Sec. 5, Ch. 439, L. 1989; amd. Sec. 2, Ch. 306, L. 1997.

Cross-References

Alteration and determination of district acreage, Title 85, ch. 7, part 18.

85-7-412. Dissolution of subdistrict. A subdistrict created under 85-7-404 may be dissolved by order of the district court of the county in which the greatest portion of lands of the subdistrict are located, in the manner provided for dissolution of irrigation districts in Title 85, chapter 7, part 10.

History: En. Sec. 6, Ch. 439, L. 1989.

Parts 5 through 9 reserved

Part 10
Dissolution of Districts

85-7-1001. Proceedings for dissolution of district. (1) Whenever an irrigation district has been organized under the provisions of parts 1 and 15, then such district may be dissolved by an order of the district court of the county in which the lands or the greater portion of the lands are situate whenever:

(a) no irrigation plant or system for the irrigation of the lands in the district has been constructed or purchased;

(b) no bonded indebtedness has been incurred; and

(c) all expenses for the organization and all other indebtedness of the district have been paid.

(2) In order that the district court may acquire jurisdiction to enter such order dissolving the district, a petition must be filed with the clerk of said district court, signed by an equal number of holders of title or evidence of title as are required to sign the original petition for the creation of the district. The district court must make an order for the hearing of said petition within 30 days from its filing, and the clerk of the court must give due notice of the hearing of such petition by posting three notices in three public places in said district and by publication of a notice of the hearing for 2 successive weeks in a newspaper of general circulation published in the county. Upon the hearing of said petition, any person interested may appear and give evidence for or against the granting of said petition. If, upon said hearing, the court finds that no bonded indebtedness of the district has been created and all of the expenses of organization and all other indebtedness have been paid and that the best interests of the landowners of said district require that the district shall be dissolved, the district court shall make such order dissolving said district and shall cause a certified copy of the order to be recorded in the office of the county clerk and recorder of said county.

History: **En. Sec. 3, Ch. 96, L. 1919; re-en. Sec. 7253, R.C.M. 1921; re-en. Sec. 7253, R.C.M. 1935; R.C.M. 1947, 89-2001.**

Cross-References

General duties of Clerk of District Court, 3-5-501.

Role and duties of County Clerk and Election Administrator, 7-4-2611.

Publication of legal notices, Title 18, ch. 7, part 2.

85-7-1002. Dissolution of districts having incurred indebtedness. (1) Any irrigation district organized and existing under the laws of the state of Montana may be dissolved by an order of the district court of the county in which the land or the greater portion of the lands of the district are situated.

(2) In case a district has incurred bonded indebtedness and has constructed or purchased any irrigation plant or system for the irrigation of the land in the district, it shall be necessary, in order that the district court may acquire jurisdiction to enter an order dissolving the district, that a petition be filed with the clerk of said district court. This petition shall be signed by an equal number of holders of title or evidence of title as are required to sign the original petition for the creation of the district and must also be signed by a sufficient number of bondholders of the district or by their assignees or duly authorized agents, representing at least 80% of the outstanding bonds of said district.

(3) In case a district has incurred bonded indebtedness but has not constructed or purchased any irrigation plant or system for the irrigation of land in the district and more than 10 years have expired since the date of organization of the district, then in such case, such district may be dissolved by an order of the district court of the county in which the land or the greater part of the lands are situated if the petition praying for dissolution shall be signed by a majority of the board of irrigation district commissioners and also by a sufficient number of bondholders of the district or by their assignees or duly authorized agents, representing at least 80% of the outstanding bonds of said district.

History: **En. Sec. 1, Ch. 60, L. 1933; re-en. Sec. 7253.1, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1943; R.C.M. 1947, 89-2002.**

Cross-References

General duties of Clerk of District Court, 3-5-501.

85-7-1003. Contents of petition. The petition of 85-7-1002 shall set forth the amount of the outstanding bonds, coupons, and other indebtedness, if any, together with the general description of them, showing the amount of each described indebtedness and the ownership, so far as known, of the indebtedness. The petition shall also state the assets of the district, including any irrigation systems, dams, reservoirs, canals, franchises, water rights, and other property; and in case any proposition has been made by the holders of the indebtedness to settle the indebtedness, this proposition, together with any plan proposed to carry the proposition into execution, shall be included in the petition.

History: **En. Sec. 2, Ch. 60, L. 1933; re-en. Sec. 7253.2, R.C.M. 1935; amd. Sec. 37, Ch. 460, L. 1977; R.C.M. 1947, 89-2003.**

85-7-1004. Use of corporation to carry out dissolution plan. In carrying out such plan and proposition, a corporation may be organized under the general laws for the purpose of acquiring the assets of said district, including the irrigation system, if any, dams, reservoirs, canals, franchises, water rights, and other property, which corporation shall have all the powers, rights, and franchises of corporate bodies organized under general laws and in addition shall have such further power as may be necessary to possess and carry on said irrigation system and exercise such franchise and water rights.

History: **En. Sec. 3, Ch. 60, L. 1933; re-en. Sec. 7253.3, R.C.M. 1935; R.C.M. 1947, 89-2004.**

85-7-1005. Hearing on petition, notice, and order. The district court must make an order for the hearing of the petition for the dissolution of the district within 30 days from its filing, and the clerk of the court must give due notice of the hearing of said petition by posting three notices in three public places in said district and by publication of a notice of the hearing for 2 successive weeks in a newspaper of general circulation published in the county and by mailing notice of said hearing to all known bondholders of the district. Upon the hearing of said petition, any person interested may appear and give evidence for or against the granting of said petition.

History: **En. Sec. 4, Ch. 60, L. 1933; re-en. Sec. 7253.4, R.C.M. 1935; R.C.M. 1947, 89-2005.**

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

85-7-1006. Court's authority at hearing. (1) At the hearing by said court it shall determine the regularity, legality, and correctness of all proceedings and in so doing shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties. The rules of pleading and practice in Title 25 not inconsistent with the provisions of this part are made applicable to the proceedings herein provided. The proceedings herein are declared to be for the general interest of the public and state. The hearing upon said petition shall be considered as an equitable action in rem.

(2) If the court shall consider, after hearing, that the plan proposed in the petition is not in the public interest and will not promote public welfare or is unfair to bondholders or property holders or general creditors, it may allow the petitioners to amend their petition and to submit a modified or different plan and hear the amended petition and hear and dispose of objections to the same. The judgment may dissolve the district as a public corporation; transfer water rights appurtenant to lands, whether represented by shares of stock or otherwise; and divest the lien of bonds upon lands in the district.

History: **En. Sec. 5, Ch. 60, L. 1933; re-en. Sec. 7253.5, R.C.M. 1935; R.C.M. 1947, 89-2006.**

85-7-1007. Court decree and sale of assets. (1) The court, in its decree, shall have the power to make the orders necessary to carry out said proposition for the discharge of the indebtedness and distribution of the property of said district and may decree a sale of its assets in such manner as may effectuate said proposition and as the court may judge best, either in one lot or in such parcels as may be provided and may provide for conveyance of said irrigation system, including dams, reservoirs, canals, franchises, water rights, and other property and also of any other assets of the district, including lands sold thereto.

(2) The court, in its investigation and determination of said matter, may take into consideration the fact that payments have been made by certain of the water users in excess of other water users who have defaulted. In its decree the court may require that the purchaser of the assets may give consideration to various water users for payments theretofore made by them on the irrigation system.

History: **En. Sec. 6, Ch. 60, L. 1933; re-en. Sec. 7253.6, R.C.M. 1935; R.C.M. 1947, 89-2007.**

85-7-1008. Final decree of dissolution — when made. Whenever all the property of such irrigation district shall have been disposed of and all the obligations thereof, if any there be, shall have been discharged, the court shall enter a final decree declaring said district to be dissolved.

History: **En. Sec. 7, Ch. 60, L. 1933; re-en. Sec. 7253.7, R.C.M. 1935; R.C.M. 1947, 89-2008.**

Parts 11 through 13 reserved

Part 14
Irrigation District Revenue Bond Act

Part Cross-References

Public bond issues generally, Title 17, ch. 5.

85-7-1401. Short title. This part may be cited as the "Irrigation District Revenue Bond Act".

History: En. Sec. 1, Ch. 193, L. 1987.

85-7-1402. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Irrigation district" means a district created pursuant to Title 85, chapter 7, part 1.

(2) "Issuer" means the board of commissioners of an irrigation district or a board of control created pursuant to Title 85, chapter 7, part 16.

(3) "Revenues" means any fees, charges, rates, rents, or lease payments.

(4) "Undertaking" means any one or a combination of the following:

(a) water sources, water rights, irrigation canals, irrigation systems, including pumping facilities or gravity measure systems, reservoirs, reservoir sites, or small power production facilities that are:

(i) certified as such by the federal energy regulatory commission; and

(ii) are associated with federal reclamation projects;

(b) any real or personal property or water rights related to or necessary to provide, operate, and maintain an undertaking listed in subsection (4)(a).

History: En. Sec. 2, Ch. 193, L. 1987.

85-7-1403. Interpretation. (1) The powers conferred in this part are in addition to the powers conferred by any other general, special, or local law.

(2) An undertaking may be acquired, constructed, or improved, and bonds may be issued under this part for such purposes, notwithstanding the provisions of Title 85, chapter 7.

(3) If the provisions of this part are inconsistent with the provisions of Title 85, chapter 7, the provisions of this part control.

History: En. Sec. 3, Ch. 193, L. 1987.

85-7-1404 through 85-7-1410 reserved.

85-7-1411. Authority to acquire, construct, maintain, operate, and lease various undertakings. (1) An irrigation district may:

(a) construct, acquire by gift, purchase, or lease, or improve any undertaking, within or outside the irrigation district, and acquire by gift, purchase, or lease land or rights in land or water rights in connection with the undertaking;

(b) operate and maintain or enter into a contract for the operation and maintenance of any undertaking and furnish or enter into a contract for the furnishing of services, facilities, and commodities of the undertaking for its own use and for the use of public and private consumers within or outside the territorial boundaries of the irrigation district. However, an irrigation district may not furnish or enter into a contract for the furnishing of electrical energy or capacity except to a qualified purchaser under the Public Utility Regulatory Policies Act of 1978.

(c) lease any undertaking to a private or governmental entity.

(2) This section may not be construed to permit an irrigation district to condemn any property owned or controlled by a rural electric cooperative or a utility, whether publicly or privately owned. An irrigation district is expressly prohibited from condemning, pursuant to Title 70, chapter 30, property owned or controlled by a rural electric cooperative or utility.

History: En. Sec. 4, Ch. 193, L. 1987; amd. Sec. 105, Ch. 125, L. 2001; amd. Sec. 23, Ch. 275, L. 2017.

85-7-1412. Joint undertakings. Irrigation districts, through their respective boards of commissioners, may enter into contracts to jointly plan, acquire, construct, operate, maintain, and finance any undertaking in accordance with Title 85, chapter 7, part 16. The contract must specify, if an undertaking is financed under this part:

(1) that the contract cannot be terminated prior to the redemption or cancellation of any bonds issued under it; and

(2) the manner of disposing of the undertaking upon termination of the contract.

History: En. Sec. 5, Ch. 193, L. 1987.

85-7-1413. Authority to issue revenue bonds. An irrigation district may:

(1) issue its bonds to finance in whole or in part the acquisition, construction, or improvement of any undertaking; and

(2) pledge to the punctual payment of bonds issued under this part and interest thereon an amount of the revenue of the undertaking (including subsequent improvements or extensions) sufficient to pay the bonds and interest as they become due, and maintain reasonable reserves therefor.

History: En. Sec. 6, Ch. 193, L. 1987.

85-7-1414. Determination of cost. An issuer, in determining costs for purposes of 85-7-1413, may include:

(1) all costs and estimated costs of the issuance of the bonds;

(2) all engineering, inspection, fiscal, and legal expenses; and

(3) interest that it estimates will accrue during the construction period and for 6 months thereafter on money borrowed or that it estimates will be borrowed.

History: En. Sec. 7, Ch. 193, L. 1987.

85-7-1415. Nature of revenue bonds. (1) No holder of any bonds issued under this part may compel the levy of any tax or assessment on property within the irrigation district to pay the bonds or interest thereon.

(2) Each bond issued under this part must recite in substance that:

(a) the bond, including interest thereon, is payable from the revenue pledged to the payment thereof or any other security pledged therefor, including a lien on the undertaking; and

(b) the bond does not constitute a debt of the irrigation district within the meaning of any constitutional or statutory limitation or provision.

History: En. Sec. 8, Ch. 193, L. 1987.

85-7-1416. Undertakings to be self-supporting. (1) An issuer issuing bonds pursuant to this part shall collect reasonable fees for the services, facilities, and commodities of the undertaking and shall revise the fees from time to time so that the undertaking remains self-supporting.

(2) The fees prescribed must produce revenue at least sufficient to:

(a) pay when due all bonds and interest thereon for which the revenue is pledged, including reserves; and

(b) provide for all expenses of operation and maintenance of the undertaking, including reserves.

History: En. Sec. 9, Ch. 193, L. 1987.

85-7-1417. Use of revenue from undertaking. (1) An issuer of bonds pursuant to this part for the acquisition, construction, or improvement of any undertaking may apply the revenue of the undertaking for the following purposes:

(a) to pay when due all bonds and interest thereon for which the revenue is pledged, including reserves;

(b) to provide for all expenses of operation and maintenance of the undertaking, including reserves;

(c) to pay and discharge notes, bonds, or other obligations and interest thereon not issued under this part for which the revenue of the undertaking is pledged;

(d) to pay and discharge notes, bonds, or other obligations and interest thereon that do not constitute a lien or encumbrance on the revenue of the undertaking and which were issued for the purpose of financing the acquisition, construction, or improvement of the undertaking; and

(e) to provide a reserve for improvements to the undertaking.

(2) Unless adequate provision has been made for the purposes listed in subsection (1), no irrigation district may transfer the revenue of the undertaking to its general fund.

History: En. Sec. 10, Ch. 193, L. 1987.

85-7-1418. Authorization for undertaking and issuance of bonds. (1) The acquisition, construction, or improvement of any undertaking may be authorized under this part.

(2) Bonds may be authorized to be issued under this part by resolution of the governing body of the issuer without an election.

History: En. Sec. 11, Ch. 193, L. 1987.

85-7-1419. Covenants in resolution authorizing issuance of bonds. A resolution authorizing the issuance of bonds under this part may contain covenants relating to:

(1) the purposes for which the proceeds of sale of the bonds may be applied and the use and disposition of the proceeds;

(2) the use and disposition of the revenue of the undertaking for which the bonds are to be issued, including the creation and maintenance of reserves;

(3) the issuance of other or additional bonds payable from the revenue of the undertaking;

(4) the operation and maintenance of the undertaking;

(5) the insurance to be carried on the undertaking and the use and disposition of insurance money;

(6) books of account and the inspection and audit of the books; and

(7) the terms and conditions upon which the holders of the bonds or any portion of them or any trustee is entitled to the appointment of a receiver by the district court, which court shall have jurisdiction in such proceedings and which receiver may:

(a) enter and take possession of the undertaking;

(b) operate and maintain the undertaking;

(c) prescribe fees, subject to the approval of the public service commission if such approval is required; and

(d) collect, receive, and apply all revenues in the same manner as the issuer itself might do.

History: En. Sec. 12, Ch. 193, L. 1987.

85-7-1420 through 85-7-1430 reserved.

85-7-1431. Remedies. The provisions of the resolution authorizing the bonds are enforceable by any bondholder in any court of competent jurisdiction by mandamus or other appropriate proceeding.

History: En. Sec. 13, Ch. 193, L. 1987.

85-7-1432. Presumptions of validity of bonds. (1) Bonds bearing the signatures of officers in office on the date of the signing of the bonds are valid obligations, notwithstanding that before the delivery of the bonds and payment for the bonds, any of the persons whose signatures appear on the bonds have ceased to be officers.

(2) The validity of the bonds is not dependent on the validity or regularity of any proceedings relating to the acquisition, construction, or improvement of the undertaking for which the bonds are issued.

(3) The resolution authorizing the bonds may provide that the bonds must contain a recital that they are issued pursuant to this part, which recital is conclusive evidence of their validity and of the regularity of the issuance.

History: En. Sec. 14, Ch. 193, L. 1987.

85-7-1433. Liens arising from bonds. The resolution authorizing the bonds must specify and define the revenues or portion of the undertaking's revenues that is appropriated and pledged for the security and payment of the bond principal and interest and the relative security of liens on the revenues in favor of bonds of one or more series or issues, whether issued concurrently or at different times.

History: En. Sec. 15, Ch. 193, L. 1987.

85-7-1434. Security interest in undertaking. The issuer may, pursuant to a mortgage, trust indenture, or security agreement, grant a security interest in the real and personal property constituting the undertaking itself.

History: En. Sec. 16, Ch. 193, L. 1987.

85-7-1435. Details relating to revenue bonds. Bonds authorized to be issued under this part shall bear interest at a rate not exceeding the limitation of 17-5-102, payable semiannually, and may be in one or more series; bear such date or dates; mature at such time or times, not exceeding 40 years from their respective dates of issuance; be payable in such place or places; carry such registration privileges; be subject to such terms of redemption; be executed in such manner; contain such terms, covenants, and conditions; and be in such form, either coupon or registered, as the resolution or subsequent resolutions may provide.

History: En. Sec. 17, Ch. 193, L. 1987.

85-7-1436. Sale of bonds. (1) Bonds authorized to be issued may be sold at a price not less than 97% of face value if the issuer determines that the sale is in the best interests of the irrigation district.

(2) The bonds may be sold at public or private sale as determined by the irrigation district pursuant to 17-5-107.

History: En. Sec. 18, Ch. 193, L. 1987; amd. Sec. 25, Ch. 253, L. 2011.

85-7-1437. Notice of sale of bonds. (1) Except as provided in subsection (2), the notice of sale of bonds required by 85-7-1436 for bonds sold publicly must be published once at least 5 days prior to such sale:

(a) in a newspaper of general circulation in the county in which the office of the issuer is located; and

(b) in a financial newspaper in New York, Chicago, or San Francisco.

(2) If the bond issue is in an amount of less than $150,000, the bond issue must be advertised at least 5 days prior to sale in a newspaper of general circulation throughout the state of Montana.

History: En. Sec. 19, Ch. 193, L. 1987; amd. Sec. 26, Ch. 253, L. 2011.

85-7-1438. Interim receipts or certificates. Pending the preparation of the definitive bonds, interim receipts or certificates, in a form and with provisions determined by the governing body, may be issued to the purchaser or purchasers of bonds sold pursuant to this part. The bonds and interim receipts or certificates are fully negotiable, as provided by Title 30, chapter 8.

History: En. Sec. 20, Ch. 193, L. 1987.

Part 15
Organization of Districts

Part Cross-References

Administration of conservation districts, Title 76, ch. 15, part 3.
Conservancy districts — organization and procedure, Title 85, ch. 9, part 4.

85-7-1501. Qualifications of commissioners and term of office. (1) To qualify as a commissioner, an individual:

(a) must own irrigable land within the division of the district that the individual would represent or hold an equity ownership in an entity that owns irrigable land within the division of the district that the individual would represent; and

(b) must be a resident of the county, or an adjoining county, in which some portion of the division of the district that the individual would represent is located.

(2) The commissioners appointed shall hold their respective offices until their respective successors are elected and qualified. Each of the commissioners shall qualify in the same manner as justices of the peace. The bond for a commissioner must be approved by the district court or judge of the district court and filed in the office of the clerk of the court.

(3) For the purposes of this section, the term "entity" means a corporation, a limited liability company, a business trust, an estate, a trust, a partnership, an unincorporated association, or a foundation.

History: En. Sec. 5, Ch. 146, L. 1909; amd. Sec. 1, Ch. 145, L. 1915; re-en. Sec. 7170, R.C.M. 1921; re-en. Sec. 7170, R.C.M. 1935; amd. Sec. 16, Ch. 460, L. 1977; R.C.M. 1947, 89-1205(part); amd. Sec. 398, Ch. 571, L. 1979; amd. Sec. 1, Ch. 584, L. 1989; amd. Sec. 1, Ch. 402, L. 2005.

Cross-References

Residence — rules for determining, 1-1-215.
General duties of Clerk of District Court, 3-5-501.
Justices of the Peace, Title 3, ch. 10, part 2.
Division of irrigation project into districts, 85-6-105.

85-7-1502. Organization of board of commissioners and establishment of office. (1) The commissioners shall meet within 10 days after their appointment and shall organize as a board by the election of one of their number as president. They shall also elect a secretary (who may or may not be a commissioner). Except as provided in part 16 of this chapter, the compensation of the secretary and all other employees authorized under this chapter shall be fixed by the board.

(2) The board shall also at this meeting designate the place where the office of the board shall be established and maintained and its records kept, which place shall be in the county containing a substantial portion of the lands in the district; and such place shall not be changed except by resolution of the board, of which notice shall be given by at least one publication in some newspaper published or of general circulation in the county wherein the office of the district is located and by posting in at least three public places in each division of the district.

History: En. Sec. 6, Ch. 146, L. 1909; re-en. Sec. 7171, R.C.M. 1921; amd. Sec. 2, Ch. 157, L. 1923; re-en. Sec. 7171, R.C.M. 1935; amd. Sec. 1, Ch. 78, L. 1961; R.C.M. 1947, 89-1206.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

85-7-1503. Board meetings. (1) All meetings of the board of commissioners shall be public and a complete record of all proceedings shall be kept by the secretary.

(2) Regular meetings of the board shall be held at such times as the board may by rule or bylaw prescribe. Special meetings may be called on 24 hours' notice by the president or any two members of the board or in such other manner and upon such other notice as the board may by rule or bylaw prescribe. All meetings of the board may be adjourned as the board shall order or direct. A majority of the commissioners shall constitute a quorum.

History: En. Sec. 7, Ch. 146, L. 1909; re-en. Sec. 7172, R.C.M. 1921; re-en. Sec. 7172, R.C.M. 1935; R.C.M. 1947, 89-1207.

Cross-References

Open meetings, Title 2, ch. 3, part 2.

85-7-1504. Bonds for commissioner and secretary. (1) When the obligations of the district, either existing or proposed, total $250,000 or more, the commissioners of an irrigation district shall each furnish a bond in the penal sum of $2,500, with corporate surety conditioned for the faithful performance of their duties under this chapter. The secretary shall furnish bond, with corporate surety, in the sum of $1,000, conditioned for the faithful performance of the secretary's duties pursuant to this chapter and for the proper safekeeping of the records and documents of the district. In all other cases, the bond for the commissioners is $1,000.

(2) If a district established under this chapter is appointed fiscal agent of the United States or is authorized by the United States to make collections of money for and on behalf of the United States in connection with any federal reclamation project, each commissioner shall execute a further and additional official bond in a sum that the secretary of the interior may require, conditioned for the faithful discharge of the duties of office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under any appointment or authorization, and that bond may be sued upon by the United States or by any person injured by the failure of the commissioner or the district to fully, promptly, and completely perform respective duties.

History: (1)En. Sec. 8, Ch. 146, L. 1909; amd. Sec. 1, Ch. 120, L. 1921; re-en. Sec. 7173, R.C.M. 1921; amd. Sec. 3, Ch. 157, L. 1923; amd. Sec. 1, Ch. 116, L. 1927; amd. Sec. 1, Ch. 15, L. 1929; re-en. Sec. 7173, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1965; amd. Sec. 1, Ch. 153, L. 1973; amd. Sec. 17, Ch. 460, L. 1977; Sec. 89-1208, R.C.M. 1947; (2)En. Sec. 5, Ch. 146, L. 1909; amd. Sec. 1, Ch. 145, L. 1915; re-en. Sec. 7170, R.C.M. 1921; re-en. Sec. 7170, R.C.M. 1935; amd. Sec. 16, Ch. 460, L. 1977; Sec. 89-1205, R.C.M. 1947; R.C.M. 1947, 89-1205(part), 89-1208(3); amd. Sec. 2783, Ch. 56, L. 2009.

Cross-References

General provisions related to official bonds, Title 2, ch. 9, part 5.
Bonds of state officers and employees, Title 2, ch. 9, part 6.
Suretyship, Title 28, ch. 11, part 4.

85-7-1505. Compensation and expenses of commissioners. (1) The commissioners, when sitting as a board or when engaged in the business of the district, are entitled to compensation at an amount determined by a majority vote of the board for each day that they are actually and necessarily engaged in the performance of irrigation district duties. The amount of compensation determined by the board may be no greater than $100.

(2) The commissioners are also entitled to reimbursement for travel expenses, as provided in 2-18-501 through 2-18-503, and for their necessary expenses when otherwise engaged in district business, including premiums on qualifying bonds and any other bonds required of the commissioners in connection with their office.

History: **En. Sec. 8, Ch. 146, L. 1909; amd. Sec. 1, Ch. 120, L. 1921; re-en. Sec. 7173, R.C.M. 1921; amd. Sec. 3, Ch. 157, L. 1923; amd. Sec. 1, Ch. 116, L. 1927; amd. Sec. 1, Ch. 15, L. 1929; re-en. Sec. 7173, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1965; amd. Sec. 1, Ch. 153, L. 1973; amd. Sec. 17, Ch. 460, L. 1977; R.C.M. 1947, 89-1208(1); amd. Sec. 3, Ch. 112, L. 1981; amd. Sec. 5, Ch. 672, L. 1983; amd. Sec. 1, Ch. 387, L. 2001.**

Cross-References

Public employees — travel, meals, and lodging, Title 2, ch. 18, part 5.
Proceedings subsequent to presenting petition, 85-7-1833.

85-7-1506. Liability of officers. For a willful violation of an express duty under this part on the part of any officer named in this part, the officer is liable upon the officer's official bond and is subject to removal from office by proceedings brought by a tax or assessment payer of the district in the district court of the county in which the office of the board of commissioners of the district is located.

History: **En. Sec. 61, Ch. 146, L. 1909; re-en. Sec. 7256, R.C.M. 1921; re-en. Sec. 7256, R.C.M. 1935; R.C.M. 1947, 89-2103; amd. Sec. 2784, Ch. 56, L. 2009.**

Cross-References

Code of ethics for public employees, Title 2, ch. 2, part 1.
Extent of sureties' liability, 2-9-511.
Montana Recall Act, Title 2, ch. 16, part 6.

85-7-1507. Conflict of interest — criminal penalty. A commissioner or any other officer named in this chapter may not in any manner be interested, directly or indirectly, in a contract awarded or to be awarded by the board or in the profits derived from a contract. For any violation of this provision, the officer is guilty of a misdemeanor and upon conviction forfeits office and the officer shall be punished as provided in 45-7-401.

History: **En. Sec. 8, Ch. 146, L. 1909; amd. Sec. 1, Ch. 120, L. 1921; re-en. Sec. 7173, R.C.M. 1921; amd. Sec. 3, Ch. 157, L. 1923; amd. Sec. 1, Ch. 116, L. 1927; amd. Sec. 1, Ch. 15, L. 1929; re-en. Sec. 7173, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1965; amd. Sec. 1, Ch. 153, L. 1973; amd. Sec. 17, Ch. 460, L. 1977; R.C.M. 1947, 89-1208(2); amd. Sec. 2, Ch. 326, L. 1979; amd. Sec. 2785, Ch. 56, L. 2009.**

Cross-References

Proscribed acts related to contracts — public employees, Title 2, ch. 2, part 2.
Misdemeanor — when no penalty specified, 46-18-212.
Proceedings subsequent to presenting petition, 85-7-1833.

85-7-1508. Compensation and duties of secretary. The member of the board acting as secretary or any person appointed by the board as secretary for the district must receive compensation for services as allowed by the board. It is the duty of the secretary to keep the books and records of accounts, contracts, securities, and other records, to perform the duties promptly each month, and to make a monthly reconcilement of accounts with the county treasurer. It is the duty of the county treasurer to make a monthly report to the secretary of all receipts, disbursements, and balances. A failure by the secretary to comply with the provisions of this section causes a forfeiture of the secretary's salary, and the secretary must be removed from office by the board.

History: **En. Sec. 2, Ch. 212, L. 1921; re-en. Sec. 7261, R.C.M. 1921; re-en. Sec. 7261, R.C.M. 1935; R.C.M. 1947, 89-2108; amd. Sec. 2786, Ch. 56, L. 2009.**

Cross-References

Duties of County Treasurer, 7-6-2111.
Conservation districts — receipt and crediting of funds — County Treasurer, 76-15-524.

Part 16
Joint Operations

85-7-1601. Authority for joint operation of districts. Whenever the board of commissioners of one or more irrigation districts, established and organized by virtue of the provisions of 85-7-101 through 85-7-103 shall, in their discretion, deem it advisable for the best interests of their district to operate, manage, supervise, and maintain the operation of their district jointly with another irrigation district, the said commissioners are hereby authorized and empowered to enter into written contracts for the creation of a joint board of control. Where irrigation works lie partly in the state of Montana and partly in an adjacent state, the board of commissioners may contract with the district or districts in the adjacent state for the creation of a joint board of control.

History: **En. Sec. 1, Ch. 179, L. 1959; R.C.M. 1947, 89-1209.**

Cross-References

What contracts must be in writing, 28-2-903.

Negotiations with other states by Department, 85-1-223.

85-7-1602. Election on joint operations. At any time after March 7, 1959, in the event that it is deemed advisable or desirable for any irrigation districts to operate under the direction of a board of control as herein provided, the boards of commissioners of the districts, after petition requesting the same be received and filed with them, must call an election to put the question before the landowners of the districts which are petitioned to be joined. In the event a majority of the landowners of each district, as provided by 85-7-1710, vote for organizing such board of control, then the commissioners of each district will be authorized and directed to enter into such contract to operate the districts in accordance with the terms of this part as provided by 85-7-1601. The election herein provided shall be conducted in the same manner and the same persons shall be entitled to vote thereat as provided for elections of commissioners of irrigation districts, in accordance with 85-7-1702, 85-7-1710, and 85-7-1712.

History: **En. Sec. 10, Ch. 179, L. 1959; R.C.M. 1947, 89-1218(part); amd. Sec. 399, Ch. 571, L. 1979.**

Cross-References

What contracts must be in writing, 28-2-903.

85-7-1603. Withdrawal from joint operation. Any district having entered into a written contract, as provided by this part, may withdraw from such contract upon submitting to the board of control, in writing, a 90-day notice of withdrawal, except that if revenue bonds have been issued by the board of control under part 14 of this chapter, the district may not withdraw from such contract until such bonds are canceled or redeemed.

History: **En. Sec. 11, Ch. 179, L. 1959; R.C.M. 1947, 89-1219; amd. Sec. 21, Ch. 193, L. 1987.**

Cross-References

Written contracts, Title 28, ch. 2, part 9.

85-7-1604. Validity of joint operations under earlier agreements. Any contract previously entered into between any two or more irrigation districts or between any such irrigation districts and the United States bureau of reclamation which meets the requirements of this part and which creates a board of control meeting all the requirements of this part is hereby declared to be a valid contract and to create a valid board of control under this part.

History: **En. Sec. 10, Ch. 179, L. 1959; R.C.M. 1947, 89-1218(part).**

Cross-References

Essential characteristics of object — contracts, 28-2-602.

85-7-1605. Purpose. This part is not intended to conflict in any way with statutes governing irrigation districts but is for the sole purpose of making it possible for one or more irrigation districts to function jointly through a central control agency for the purpose of efficiency, simplicity, and economy.

History: **En. Sec. 12, Ch. 179, L. 1959; amd. Sec. 18, Ch. 460, L. 1977; R.C.M. 1947, 89-1220.**

85-7-1606 through 85-7-1610 reserved.

85-7-1611. Board of control — composition and vacancies. (1) The board of control must be composed of one or more irrigation commissioners from each district involved and one member at large. Each irrigation commissioner must be appointed for 1 year by the board of commissioners of the district that the commissioner represents. The member at large must be a landowner from one of the districts involved or a person representing any person or entity that receives water delivery from the irrigation project that delivers water to the member districts. The member at large must be appointed by the commissioner members to serve for a period of 1 year and shall give a bond, the same as an irrigation district commissioner. The member at large may not be an employee, agent, water commissioner, or servant of any of the districts involved. At no time may the board membership be less than three members. Each member of the board of control and the manager, if hired, before beginning duties shall give a bond to the board of control in the amount of $5,000, conditioned upon the faithful performance of the member's duties.

(2) Vacancies occurring during the term in the position of a commissioner member must be filled for the remainder of the unexpired term by appointment of the board of commissioners of the district involved. Vacancies occurring in the position of member at large must be filled for the remainder of the unexpired term in the same manner as the original appointment.

History: En. Sec. 2, Ch. 179, L. 1959; R.C.M. 1947, 89-1210; amd. Sec. 1, Ch. 143, L. 1999.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

85-7-1612. Board of control — powers and duties. (1) The board of control established by this part is the operating agent of the contracting districts for the operation and maintenance of irrigation and/or drainage works and the delivery of water therefrom.

(2) The board shall make and execute all necessary contracts; employ and appoint such agents, officers, and employees as may be required; and prescribe their duties.

(3) The board may institute and maintain any and all actions and proceedings and suits at law or in equity, necessary or proper in order to fully carry out the provisions of this chapter or to enforce, maintain, protect, or preserve any and all rights, privileges, and immunities created by this part or acquired in pursuance thereof. In all courts, suits, or proceedings, the board may sue, appear, and defend in person or by its attorneys and in the name of such board of control.

(4) The board may adopt rules and bylaws governing the calling and holding of meetings of the board; the manner of transacting business thereat; and the publishing or posting of the orders, resolutions, and proceedings of the board. The board shall pass or adopt bylaws and rules for the apportionment and distribution of water to the lands of the contracting districts and for the protection and preservation of the works and other property of the districts. All orders and resolutions shall be passed or adopted by a majority of the members of the board of control by a "yea" and "nay" vote, to be entered upon the records of the board.

(5) The board of control may perform all other acts necessary or appropriate to fully carry out the purposes of this part.

(6) The board of control may plan, acquire, construct, operate, maintain, lease, or finance an undertaking through the issuance of revenue bonds, as provided in part 14 of this chapter.

History: En. Sec. 3, Ch. 179, L. 1959; R.C.M. 1947, 89-1211; amd. Sec. 3, Ch. 326, L. 1979; amd. Sec. 22, Ch. 193, L. 1987; amd. Sec. 79, Ch. 83, L. 1989.

Cross-References

Agency, Title 28, ch. 10.

Drainage districts, Title 85, ch. 8.

85-7-1613. Board of control — per diem and expenses. The members of the board of control, when sitting as a board or when engaged in the business of the board, are entitled to compensation of $25 for each day they are actually and necessarily engaged in the performance of irrigation district duties and to reimbursement for travel expenses as provided in 2-18-501 through 2-18-503, and for their necessary expenses.

History: En. Sec. 4, Ch. 179, L. 1959; R.C.M. 1947, 89-1212; amd. Sec. 4, Ch. 112, L. 1981; amd. Sec. 6, Ch. 672, L. 1983.

Cross-References

Public employees — travel, meals, and lodging, Title 2, ch. 18, part 5.

85-7-1614. Board of control — office and records. The board of control is hereby authorized and empowered to establish an office in one of the contracting districts; to hold its proceedings therein; and to keep on file all necessary petitions, papers, minutes, documents, or other instruments belonging to the board of control and the contracting districts.

History: En. Sec. 5, Ch. 179, L. 1959; R.C.M. 1947, 89-1213.

85-7-1615. Manager of operations. The board of control may hire a manager to supervise and conduct the operations of the district or districts over which it presides or to hire a manager for each district under its supervision, whichever it considers advisable. The manager or managers shall perform all duties set out by the board of control.

History: En. Sec. 6, Ch. 179, L. 1959; R.C.M. 1947, 89-1214; amd. Sec. 2787, Ch. 56, L. 2009.

85-7-1616. Required records and audits. (1) The board of control shall keep or cause to be kept, in the form prescribed by the department of administration, a full and complete book and record of the accounts, records, contracts, securities, minutes of meetings, and other matters of every kind pertaining to or belonging to the joint operation of the irrigation districts.

(2) The department of administration shall prescribe forms for the use of the board of control.

(3) The accounting records of all boards of control must be audited in accordance with 2-7-503.

History: En. Sec. 7, Ch. 179, L. 1959; amd. Sec. 165, Ch. 253, L. 1974; amd. Sec. 51, Ch. 213, L. 1975; R.C.M. 1947, 89-1215; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 11, Ch. 179, L. 1995; amd. Sec. 214, Ch. 483, L. 2001.

Cross-References

Studies and reports, Title 2, ch. 7.

85-7-1617. Apportionment of costs of joint operation. The districts entering into a contract for their joint control shall pay to the board of control, proportionately on an acreage basis the necessary costs, expenses, and charges for the general administration, maintenance, and repairs.

History: En. Sec. 8, Ch. 179, L. 1959; R.C.M. 1947, 89-1216.

Cross-References

Financial aspects of conservation districts, Title 76, ch. 15, part 5.
Drainage districts — taxes and assessments, Title 85, ch. 8, part 6.
Conservancy districts — finance, Title 85, ch. 9, part 6.

85-7-1618. Custody and disbursement of funds. The county treasurer of the county in which the office of the board is established is the custodian of all funds made available for the use of the board, and the county treasurer shall pay out the funds upon the order of the board. The orders must be signed by the secretary or treasurer of the board of control and countersigned by the president or, in the president's absence, by the vice president of the board of control. The board funds must be kept separate and distinct from all other county funds. The county treasurer to whom board funds are entrusted is liable on the treasurer's bond for the safekeeping of the funds.

History: En. Sec. 9, Ch. 179, L. 1959; R.C.M. 1947, 89-1217; amd. Sec. 2788, Ch. 56, L. 2009.

Cross-References

Duties of County Treasurer, 7-6-2111.

Part 17
Elections

Part Cross-References

Elections, Title 13.
Conservation districts — general election, 76-15-303.
Conservation districts — election of supervisors, 76-15-304.
Drainage districts — election of Commissioners, 85-8-302.
Conservancy districts — ordering of election by court, 85-9-206.

85-7-1701. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 10, Ch. 146, L. 1909; re-en. Sec. 7175, R.C.M. 1921; re-en. Sec. 7175, R.C.M. 1935; R.C.M. 1947, 89-1302.

85-7-1702. Election of commissioners — term of office. (1) The election for commissioners in each district must be held annually in accordance with Title 13, chapter 1, part 5. The election may be at the district's annual meeting or on the date established in 13-1-504(1).

(2) A person eligible to vote in the district may file a declaration of candidacy for the office of commissioner with the election administrator or deputy election administrator within the time period specified in 13-1-502.

(3) Within 40 days following their election, the commissioners shall meet and organize as a board by electing a president from their number and a secretary, who may or may not be a commissioner, who shall each hold office at the pleasure of the board.

(4) Except as provided in 85-7-204, the term of office of each commissioner begins on the date of the commissioner's election and continues for 3 years.

(5) Commissioners are elected by the electors of the entire district.

History: En. Sec. 11, Ch. 146, L. 1909; amd. Sec. 4, Ch. 153, L. 1917; amd. Sec. 1, Ch. 3, L. 1921; amd. Sec. 1, Ch. 7, Ex. L. 1921; re-en. Sec. 7176, R.C.M. 1921; re-en. Sec. 7176, R.C.M. 1935; amd. Sec. 1, Ch. 302, L. 1977; R.C.M. 1947, 89-1303(part); amd. Sec. 370, Ch. 571, L. 1979; amd. Sec. 9, Ch. 27, L. 1981; amd. Sec. 40, Ch. 250, L. 1985; amd. Sec. 1, Ch. 269, L. 1991; amd. Sec. 11, Ch. 254, L. 1999; amd. Sec. 246, Ch. 49, L. 2015; amd. Sec. 17, Ch. 242, L. 2017.

Cross-References

Conservation districts — election of supervisors, 76-15-304.

Election on joint operations, 85-7-1602.

Drainage districts — election of Commissioners, 85-8-302.

85-7-1703. Vacancies among commissioners. If there is a vacancy on the board of commissioners from any cause, the vacancy must be filled until the next regular or special election by appointment by the board. The remaining commissioners constitute a quorum for the purpose of filling any vacancy. If a vacancy exists for every position on the board, the judge of the district court of the county in which the division or major portion of the division is situated shall make the appointments. The appointee must be an owner of irrigable land within the division of the district that the appointee represents and must be a resident of the county in which the division of the district or some portion of the division is situated. A commissioner appointed under this section holds office until a successor is elected and qualified.

History: En. Sec. 12, Ch. 146, L. 1909; re-en. Sec. 7177, R.C.M. 1921; amd. Sec. 5, Ch. 157, L. 1923; re-en. Sec. 7177, R.C.M. 1935; R.C.M. 1947, 89-1304; amd. Sec. 5, Ch. 112, L. 1981; amd. Sec. 2, Ch. 584, L. 1989; amd. Sec. 2789, Ch. 56, L. 2009.

Cross-References

Residence — rules for determining, 1-1-215.

District Courts, Title 3, ch. 5.

Drainage districts — vacancies, 85-8-307.

Conservancy districts — vacancies, 85-9-401.

85-7-1704. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 13, Ch. 146, L. 1909; re-en. Sec. 7178, R.C.M. 1921; re-en. Sec. 7178, R.C.M. 1935; R.C.M. 1947, 89-1305.

85-7-1705. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 14, Ch. 146, L. 1909; re-en. Sec. 7179, R.C.M. 1921; re-en. Sec. 7179, R.C.M. 1935; R.C.M. 1947, 89-1306.

85-7-1706. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 15, Ch. 146, L. 1909; re-en. Sec. 7180, R.C.M. 1921; re-en. Sec. 7180, R.C.M. 1935; amd. Sec. 1, Ch. 164, L. 1947; R.C.M. 1947, 89-1307.

85-7-1707. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 16, Ch. 146, L. 1909; re-en. Sec. 7181, R.C.M. 1921; re-en. Sec. 7181, R.C.M. 1947, 89-1308.

85-7-1708. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 17, Ch. 146, L. 1909; re-en. Sec. 7182, R.C.M. 1921; re-en. Sec. 7182, R.C.M. 1947, 89-1309.

85-7-1709. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 18, Ch. 146, L. 1909; re-en. Sec. 7183, R.C.M. 1921; re-en. Sec. 7183, R.C.M. 1947, 89-1310.

85-7-1710. Qualification of electors and nature of voting rights. (1) (a) At all elections held under the provisions of this part, except as otherwise expressly provided, the following holders of title or evidence of title to irrigable lands within the district, designated "electors", are entitled to vote if, except as provided in subsection (1)(b), they are qualified electors under the constitution and general election laws of the state:

(i) guardians, executors, administrators, and trustees;

(ii) domestic corporations, by their duly authorized agents; and

(iii) owners of land described in subsection (3), including but not limited to corporations, limited liability companies, partnerships, and other entities that may vote through their duly authorized agents.

(b) Electors under this section are not subject to state residency requirements, registration requirements, or county signature verification requirements.

(2) In all elections held under this part, each elector is permitted to cast one vote for each acre of irrigable land or major fraction of an acre owned by the elector within the district, irrespective of the location of the irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within congressional subdivisions,

platted lots or blocks except as otherwise provided for, election precincts, or district divisions, but any elector owning any less than 1 acre of irrigable land is entitled to one vote. Until the irrigable area under the proposed plan of reclamation is determined, all land included within the boundaries of the district must be considered irrigable land for election purposes.

(3) (a) Whenever land is owned by co-owners, either owner may vote on behalf of the co-owners, the owners may vote based on an agreed-upon percentage ownership, or the owners may designate one of their number or an agent to cast the vote for the owners. Whenever the land is owned by a single owner, the owner at the owner's discretion may designate an agent to cast the vote. Only one vote may be cast for each acre of irrigable land or major fraction of an acre by the voting individual. Whenever land is under contract of sale to a purchaser, the purchaser may vote on behalf of the owner of the land. Prior to voting, the agent of a corporation, a single owner or the co-owners, the co-owner designated for the purpose of voting, or the purchaser of land under contract of sale shall file with the secretary of the district a written document indicating the agent's authority, executed and signed by the proper officers of the corporation, by the single owner or co-owners, or by the owner of land under contract of sale, and upon filing, the agent or co-owner or purchaser is an elector within the meaning of this part.

(b) Prior to voting, if there is a change in the designated agent, the new designated agent is responsible for providing a written document signed by the proper officers of the corporation, by the single owner or co-owners, or by the owner of land under contract of sale indicating the changes in the designated agent.

(c) When an irrigation district provides notice of an election, the notice must indicate that, if there is a change in a designated agent, a new signed document must be presented to the district indicating the change. The list of designated agents compiled under this section must be maintained and certified by the irrigation district to ensure that only one vote is cast on behalf of each acre or fraction of an acre.

(4) The board of commissioners shall choose one of the following methods of balloting:

(a) for 10 votes or less, separate ballots must be used, and for more than 10 votes, the elector shall vote in blocks of 10 using one ballot for each 10 votes and separate ballots for odd votes over multiples of 10; or

(b) the elector shall submit a ballot that includes the number of irrigable acres owned within the district and the number of votes being cast.

(5) (a) Except as provided in subsections (5)(b) and (5)(c), if the county election office administers the election, the list of eligible electors that is maintained and certified by the irrigation district must be provided to the county election office not less than 60 days before the election.

(b) If the irrigation district receives a valid change document regarding a qualified elector or a designated agent at least 14 days prior to an election being administered by the county election office and the district fulfills the requirements of subsection (5)(c), the elector or designated agent is eligible to vote.

(c) The irrigation district shall notify the election office within 4 days of receiving a change document as described in subsection (5)(b) and shall provide the necessary information regarding the change to the election office in order for the election office to administer the proper ballot.

(d) After receiving notice in accordance with subsection (5)(c), the county election office shall provide the elector with a ballot.

(e) If a qualified elector or designated agent provides a valid change document to an irrigation district within the 13 days prior to and including election day, the district must provide to the elector or agent a notice, which the elector or agent may present to the election office. If the election office determines that the votes have not already been cast for the respective irrigable acres, the elector or agent may receive a ballot and cast the votes for those acres.

History: En. Sec. 19, Ch. 146, L. 1909; re-en. Sec. 7184, R.C.M. 1921; amd. Sec. 6, Ch. 157, L. 1923; re-en. Sec. 7184, R.C.M. 1935; amd. Sec. 1, Ch. 164, L. 1953; amd. Sec. 19, Ch. 460, L. 1977; R.C.M. 1947, 89-1311; amd. Sec. 371, Ch. 571, L. 1979; amd. Sec. 10, Ch. 27, L. 1981; amd. Sec. 1, Ch. 261, L. 1983; amd. Sec. 3, Ch. 584, L. 1989; amd. Sec. 1, Ch. 191, L. 1993; amd. Sec. 1, Ch. 134, L. 2013; amd. Sec. 1, Ch. 145, L. 2017; amd. Sec. 1, Ch. 225, L. 2019.

Cross-References

Qualified elector, Art. IV, sec. 2, Mont. Const.

Qualifications of voter, 13-1-111.

School elections — qualifications of elector, 20-20-301.
Agency, Title 28, ch. 10.
Property — ownership by several persons — types, 70-1-306.
Joint interest defined, 70-1-307.
Powers and duties of guardian of minor, 72-5-231.
Powers and duties of guardian of incapacitated person, 72-5-321.
Powers of conservator in administration, 72-5-427.
Public Administrator — powers and duties in administration, Title 72, ch. 15, part 2.
Powers of trustees, Title 72, ch. 38, part 8.

85-7-1711. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 20, Ch. 146, L. 1909; re-en. Sec. 7185, R.C.M. 1921; re-en. Sec. 7185, R.C.M. 1935; R.C.M. 1947, 89-1312.

85-7-1712. Call for election. The board of commissioners may at any time call an election and submit to the qualified electors of the district any question which under the provisions of this chapter is required or which, in the judgment of the board, is proper to be submitted to popular vote. The election must be called by resolution and conducted in accordance with Title 13, chapter 1, part 5.

History: En. Sec. 21, Ch. 146, L. 1909; re-en. Sec. 7186, R.C.M. 1921; re-en. Sec. 7186, R.C.M. 1935; R.C.M. 1947, 89-1313; amd. Sec. 372, Ch. 571, L. 1979; amd. Sec. 247, Ch. 49, L. 2015.

Cross-References
Election on joint operations, 85-7-1602.

85-7-1713. Where documents to be filed and proceedings to be held. Where the lands of a district lie within more than one county, all petitions, papers, documents, or other instruments shall be filed and proceedings had in the county in which the office of the board is established.

History: En. Sec. 22, Ch. 146, L. 1909; re-en. Sec. 7187, R.C.M. 1921; re-en. Sec. 7187, R.C.M. 1935; R.C.M. 1947, 89-1314; amd. Sec. 6, Ch. 112, L. 1981.

Part 18
Alteration and Determination of District Acreage

Part Cross-References
Alteration and termination of conservation districts, Title 76, ch. 15, part 8.
Drainage districts — alteration of districts, Title 85, ch. 8, part 4.
Conservancy districts — alteration of districts, Title 85, ch. 9, part 5.

85-7-1801. Change in boundaries. The boundaries of any irrigation district organized hereunder may be changed in the manner herein prescribed. Such change of the boundaries of the district shall not impair or affect its organization or its rights in or to property or any of its rights or privileges of whatsoever kind or nature, nor shall it affect, impair, or discharge any contract, obligation, lien, or charge for or upon which it was or might become liable or chargeable had such change of its boundaries not been made.

History: En. Sec. 23, Ch. 146, L. 1909; amd. Sec. 1, Ch. 98, L. 1919; re-en. Sec. 7188, R.C.M. 1921; re-en. Sec. 7188, R.C.M. 1935; R.C.M. 1947, 89-1401(part).

Cross-References
Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

85-7-1802. Elimination of lands from district. Whenever lands have been included within the boundaries of an established and organized irrigation district, which from their location or conformation cannot be successfully irrigated by the irrigation works or system already constructed or proposed to be constructed or the cost of irrigating the same will become burdensome upon the landowners of the district, a majority in number of the holders of title or evidence of title to the land included in such district (such holders of title or evidence of title also representing a majority in acreage of said lands) may petition the district court of the county in which the lands of the district or the greater portion thereof are situated for an order or decree changing the boundaries of the district by the elimination therefrom of such lands.

History: En. Sec. 23, Ch. 146, L. 1909; amd. Sec. 1, Ch. 98, L. 1919; re-en. Sec. 7188, R.C.M. 1921; re-en. Sec. 7188, R.C.M. 1935; R.C.M. 1947, 89-1401(part); amd. Sec. 3, Ch. 306, L. 1997.

Cross-References
District Court jurisdiction, Title 3, ch. 5, part 3.

85-7-1803. Requirements for petition to eliminate lands. (1) The petition for this purpose must be signed by the required number of holders of title or evidence of title to lands within such district, as hereinbefore specified, and the same shall be filed with the clerk of the district court as herein designated.

(2) Such petition shall set forth:

(a) the name of the district;

(b) a general description of the lands to be eliminated or excluded from the district;

(c) the names of the holders of title or evidence of title to the lands sought to be excluded; the names of the holders of title or evidence of title to the remainder of the lands of said district, ascertained in the manner mentioned in 85-7-101 and 85-7-102; and if any holder of title is a nonresident of the county or counties in which the district lies, the post-office address of such nonresident owners, if known;

(d) a brief description of the character of the works, water rights, canals, and other property acquired or proposed to be acquired or constructed for irrigation purposes in the district;

(e) a brief statement of the reasons why the lands sought to be excluded should be eliminated from the district;

(f) a prayer for the exclusion of the lands sought to be eliminated therefrom.

(3) The petition shall be accompanied by a map or plat of the district, showing thereon the lands sought to be eliminated therefrom, and a good and sufficient bond or undertaking to be approved by the district court or judge thereof of the county in which the petition is required to be filed under the provisions hereof, to pay all costs in and about the proceedings and the hearing thereof in the event that said petition is denied.

History: En. Sec. 23, Ch. 146, L. 1909; amd. Sec. 1, Ch. 98, L. 1919; re-en. Sec. 7188, R.C.M. 1921; re-en. Sec. 7188, R.C.M. 1935; R.C.M. 1947, 89-1401(part).

Cross-References

General duties of Clerk of District Court, 3-5-501.
Guaranty — general provisions, Title 28, ch. 11, part 1.

85-7-1804. Minor errors. Mere error or omission in the description of any lands or in the names of any of the holders of title or evidence of title to lands shall not operate to render invalid any proceedings hereunder or to deprive the district court of jurisdiction of the subject matter.

History: En. Sec. 23, Ch. 146, L. 1909; amd. Sec. 1, Ch. 98, L. 1919; re-en. Sec. 7188, R.C.M. 1921; re-en. Sec. 7188, R.C.M. 1935; R.C.M. 1947, 89-1401(part).

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

85-7-1805. Notice requirements. (1) Upon the filing of a petition, the district court shall fix the time and place of hearing on the petition and direct that notice of the petition be given.

(2) The petitioner shall cause to be published at least once a week for 2 successive weeks in a newspaper published in the county where the petition is filed a notice stating the time and place of the hearing on the petition that includes a brief statement of the matters set forth in the petition. If any portion of the lands sought to be excluded from the district lie within any other county or counties, then the notice shall be published as provided above in a newspaper published in each county or counties. The first publication of the notice must occur not less than 30 days before the hearing.

(3) If any holder of title or evidence of title to lands sought to be excluded from the district is a nonresident of the county or counties in which the district lies, the petitioner shall within 3 days of the first publication of the notice mail a copy of the notice to each nonresident whose address is stated in the petition. The affidavit of publication as to the facts of the publishing and mailing of the notice affixed to a copy of the notice is sufficient evidence of the facts.

History: En. Sec. 23, Ch. 146, L. 1909; amd. Sec. 1, Ch. 98, L. 1919; re-en. Sec. 7188, R.C.M. 1921; re-en. Sec. 7188, R.C.M. 1935; R.C.M. 1947, 89-1401(part); amd. Sec. 1, Ch. 95, L. 2015.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.
Publication of legal notices, Title 18, ch. 7, part 2.

85-7-1806. Court hearing on petition to eliminate lands. (1) At the time specified in the notice, the district court in which the petition is filed shall hear the petition but may adjourn such meeting from time to time, not exceeding 2 weeks in all, and may continue the hearing for the want of sufficient notice or other good cause. The court upon application of the petitioners shall permit the petition to be amended and may order further or additional notice to be given. Upon such hearing, all persons interested whose lands or rights may be damaged or benefited by the granting of the petition or the exclusion of the lands from the district may appear and contest the necessity or justice of the court's making an order granting such petition in whole or in part, and the contestants and petitioners may offer any competent evidence in regard thereto.

(2) It shall be the duty of the court to hear and determine whether the requirements as herein set forth have been complied with, and for that purpose shall hear all competent and relevant testimony that may be offered.

History: **En. Sec. 23, Ch. 146, L. 1909; amd. Sec. 1, Ch. 98, L. 1919; re-en. Sec. 7188, R.C.M. 1921; re-en. Sec. 7188, R.C.M. 1935; R.C.M. 1947, 89-1401(part).**

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

85-7-1807. Court findings and order on petition to eliminate lands. The court may grant such petition in whole or in part and may make an order making such changes in the boundaries of the district by the exclusion of such lands therefrom as may be deemed advisable or as fact, right, and justice may require. Such order shall be conclusive upon all of the owners of lands within the district and shall be final unless appealed from to the supreme court within 60 days of the entry of said order. For the purposes of any such appeal, such order shall be regarded as a final judgment of said district court. A copy of such order, duly certified to by the clerk of said court, shall be filed for record within 30 days after such order is made and entered with the county clerk and recorder of the county wherein lands included within such district are situated; provided, however, there shall be omitted from such copy lands not situated in the county in which such copy is filed.

History: **En. Sec. 23, Ch. 146, L. 1909; amd. Sec. 1, Ch. 98, L. 1919; re-en. Sec. 7188, R.C.M. 1921; re-en. Sec. 7188, R.C.M. 1935; R.C.M. 1947, 89-1401(part).**

Cross-References

Supreme Court jurisdiction, Title 3, ch. 2, part 2.
District Court jurisdiction, Title 3, ch. 5, part 3.
General duties of Clerk of District Court, 3-5-501.

85-7-1808. Extension of boundaries and addition of lands. The boundaries of any irrigation district may be extended at any time to include lands susceptible of irrigation by the works of the district or through exchange or substitution of water, as hereinafter provided, excluding and excepting therefrom all lands already under irrigation, lands having water rights appurtenant thereto, or lands that can be irrigated from sources more feasible than the district system, unless the owner of such lands shall consent in writing to have such lands included in said district; provided, however, that a petition be presented to the district court of the judicial district in which the irrigation district was organized, asking for such extension, upon terms to be fixed by the court, signed by the holders of title or evidence of title (evidenced as provided in 85-7-101 and 85-7-102) of the lands proposed to be included in the district, representing not less than two-thirds in acreage of said lands.

History: **En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 3, Ch. 145, L. 1915; re-en. Sec. 7189, R.C.M. 1921; re-en. Sec. 7189, R.C.M. 1935; R.C.M. 1947, 89-1402(1).**

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.
Lands under irrigation — inclusion in district, 85-7-1934.
Added lands to pay proportional share of bonded indebtedness, 85-7-2102.
Confirmation of Board actions by District Court, 85-7-2112.

85-7-1809. Notice of hearing for addition of lands. When such petition is presented, the district court or judge thereof shall appoint a day for a public hearing. Notice of the hearing shall be given by the clerk of the court by publication at least once a week for at least 2 weeks in a newspaper published or of general circulation in the county in which the office of the district is situated. If any of said lands sought to be included in the district lie in a county or counties other than that in which the office of the district is situated, such notice shall also be likewise published in some newspaper published or of general circulation in each such other county or counties. If there be no such newspaper, then such notice shall be posted in at least three public places in the territory sought to be included.

History: **En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 3, Ch. 145, L. 1915; re-en. Sec. 7189, R.C.M. 1921; re-en. Sec. 7189, R.C.M. 1935; R.C.M. 1947, 89-1402(2).**

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2.

85-7-1810. Hearing and order on petition for addition of lands. At such public hearing, the district court shall hear those who may desire changes made in the proposed extension, all those whose lands are included or sought to be included in the district, and all other persons whose rights may be affected by the proposed extension. Such public hearing may be adjourned from day to day, not exceeding 20 days in all, and the court shall make an order either granting or denying said petition. If said petition is granted, said order shall describe the lands included in said extension and the terms on which said land shall be included, and a copy of said order shall be filed with the county clerk and recorder in the county wherein said lands are situated. The order of the district court shall be final and conclusive, the same as the order originally creating the district, unless appealed from to the supreme court within 10 days from the entry of the order. The extension of such boundaries shall not deprive the lands already in said district of an adequate supply of water for irrigation purposes.

History: En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 3, Ch. 145, L. 1915; re-en. Sec. 7189, R.C.M. 1921; re-en. Sec. 7189, R.C.M. 1935; R.C.M. 1947, 89-1402(3).

Cross-References

Supreme Court jurisdiction, Title 3, ch. 2, part 2.
District Court jurisdiction, Title 3, ch. 5, part 3.
Role and duties of County Clerk and Election Administrator, 7-4-2611.

85-7-1811. Procedure to correct errors and omissions in orders or decrees. (1) The district court retains jurisdiction of any petition presented to establish an irrigation district or to enlarge and increase its boundaries or to exclude land from the district for the purpose of correcting any omissions, defects, or errors in the proceedings of the court. The court may correct and, if necessary, amend the order of the district court establishing the district, any order extending the boundaries of the district, or any order excluding lands from the district, including the description of lands included or intended to be included in the district or excluded from the district or intended to be excluded, the boundaries of the divisions into which it is divided, and any other matter that is before the court on the application to create the district, to enlarge or extend its boundaries, or to exclude lands from the district. The court may, on application of the board of commissioners of the district, correct and amend the terms of any order or judgment of the court so that it conforms to the provisions of the statute under the authority of which the order was made. The board of commissioners of any district may adopt a resolution directing its president and secretary to prepare, execute, and file with the clerk of the district court a petition that sets forth the following matters:

(a) the name of the district and a reference to the order in which the defect, error, omission, errors in description of lands included or excluded, or departure from the statute occurred;

(b) a statement of the defects, errors, omissions, irregularities, errors in description of lands included or excluded, or variance from the statutory requirements; and

(c) a request for an order correcting the defects, errors, omissions, or irregularities.

(2) If the error, defect, omission, irregularity, or variance is in the description of any land or lands embraced in the district, the petition must set forth the correct description of the lands, the names of the holders of title or evidence of title to the lands, ascertained in the manner provided in 85-7-101 and 85-7-102, and if any holder is a nonresident of the county or counties in which the district lies, the post-office address of the nonresident owner, if known. Upon the filing of the petition, the court shall direct notice of the hearing of the petition to be given in a manner as determined necessary to protect the rights and interests of the parties and, after a hearing of any parties intervening, shall enter an order correcting the defects, errors, omissions, or irregularities. If the defects, errors, omissions, or irregularities are in the description of the lands embraced in the district, the district court or judge shall direct the clerk of the court to publish, at least once a week for 2 successive weeks, in some newspaper published in the county where the petition is filed, a copy of the petition, together with a notice stating the time and place fixed by the district court when and where a hearing on the petition will be held, and, if any portion of the lands within the district lies within any other county or counties, the petition and notice must be published as provided in this subsection in a newspaper published in each of those counties. If a newspaper is not published in the county, the petition and notice may be

published in an adjoining county. The first publication of the petition and notice must be not less than 30 days prior to the time mentioned in the notice for the hearing. If any holder of title or evidence of title to lands within the district is a nonresident of the county or counties in which the district lies, the clerk of court shall, within 3 days after the first publication, mail a copy of the petition and notice to each nonresident whose post-office address is stated in the petition. The certificate of the clerk of the district court, under the seal of the court, as to the facts of the publishing and mailing of the petition and notice, affixed to a copy of the notice, is sufficient evidence of the facts.

(3) At the time specified in the notice, the district court in which the petition is filed shall hear the petition but may adjourn the hearing from time to time and may continue the hearing for want of sufficient notice or other good cause. The court, upon application of the petitioners or any person or persons interested, shall permit the petition to be amended and may order further or additional notice to be given. Upon the hearing, all persons interested may appear and contest the application for the order requested in the petition, and the contestants and petitioners may offer any competent evidence pertinent to the request of the petition.

(4) The court may make changes in the description of the lands embraced within the limits of the district that may be considered advisable or as fact, right, and justice may require but may not exclude from the district any lands described as a part of the district in the order creating it after the district has issued bonds or entered into a contract with the United States under 85-7-1906. However, lands may be excluded from a district that has entered into a contract with the United States under 85-7-1906 if the secretary of the interior consents to the exclusion.

(5) If, on final hearing, it is found by the court that the petition does not substantially comply with the requirements of this section or that the facts stated in the petition are not sustained by the evidence, the court shall dismiss the petition at the cost of the petitioners and shall make and enter an order to that effect. If it is found that the petition substantially complies with the requirements of this section and that the facts stated in the petition are sustained by the evidence, the court shall make and enter an order in accordance with the request of the petition.

(6) All orders and findings of the district court made under the provisions of this section are conclusive upon all owners of lands within the district and are final unless appealed from to the supreme court within 60 days from the date of entry of the order. A copy of the order, certified to by the clerk of court, must be filed for record within 30 days after the order is made and entered with the county clerk and recorder of the county in which the lands included within the district are situated. There must be omitted from the copy lands not situated in the county in which the copy is filed.

History: En. Sec. 1, Ch. 54, L. 1923; re-en. Sec. 7189.1, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1937; R.C.M. 1947, 89-1403; amd. Sec. 2790, Ch. 56, L. 2009.

Cross-References

Supreme Court jurisdiction, Title 3, ch. 2, part 2.
District Court jurisdiction, Title 3, ch. 5, part 3.
General duties of Clerk of District Court, 3-5-501.
Role and duties of County Clerk and Election Administrator, 7-4-2611.
Publication of legal notices, Title 18, ch. 7, part 2.
Corner Recordation Act of Montana — surveys and coordinates, Title 70, ch. 22.
Confirmation of Board actions by District Court, 85-7-2112.
Effect of federal involvement, 85-7-2113.

85-7-1812 through 85-7-1820 reserved.

85-7-1821. Change of boundaries of irrigation districts indebted to United States. The boundaries of any irrigation district established and organized under the laws of the state of Montana and indebted to the United States for money loaned said district may be changed in the manner hereinafter prescribed. Such change in boundaries of said district shall not impair or affect its organization or its rights in or to property or any of its rights or privileges of whatsoever kind or nature.

History: En. Sec. 1, Ch. 132, L. 1935; re-en. Sec. 7194.1, R.C.M. 1935; R.C.M. 1947, 89-1409.

Cross-References

No impairment of contracts, Art. II, sec. 31, Mont. Const.
Effect of federal involvement, 85-7-2113.

85-7-1822. Petition to exclude lands. (1) Whenever lands have been included within the boundaries of any irrigation district of the character designated in 85-7-1821 which from their location or conformation cannot be successfully irrigated by the irrigation works or system constructed for that purpose or when the cost of irrigating the same has or will become burdensome upon the landowners of the district, the owners of said lands, with the consent of the board of commissioners of said district and the secretary of interior of the United States or such other federal authority, instrumentality, or agency as may be appropriate, may petition the district court of the county in which such lands are situated for an order or decree changing the boundaries of the district by the elimination therefrom of such lands. The petition for this purpose must be signed by the owners of the land sought to be excluded and accompanied with the written consent of the board of commissioners of the district and the secretary of the interior of the United States or such other federal authority, instrumentality, or agency as may be appropriate. Such petition shall set forth:

(a) the name of the district;

(b) a particular description of the land sought to be excluded or eliminated from the district;

(c) the names of the holders of title to the lands sought to be excluded;

(d) a brief description of the character of works, water rights, canals, or works owned and acquired by the district;

(e) a statement of the reasons why the lands sought to be excluded should be eliminated from the district;

(f) a prayer for the exclusion of the lands sought to be eliminated therefrom.

(2) The petition shall be accompanied with a map or plat of the district, showing thereon the lands sought to be eliminated therefrom, and a good and sufficient bond or undertaking to be approved by the district court or judge thereof of the county in which the petition is required to be filed under the provisions hereof, to pay all costs in and about the proceedings and hearing thereof in the event that said petition is denied.

History: **En. Sec. 2, Ch. 132, L. 1935; re-en. Sec. 7194.2, R.C.M. 1935; R.C.M. 1947, 89-1410.**

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Corner Recordation Act of Montana — surveys and coordinates, Title 70, ch. 22.

Effect of federal involvement, 85-7-2113.

85-7-1823. Notice of hearing. On such petition being filed, the district court or judge thereof shall make an order fixing the time and place for a hearing and directing that notice be given. Thereupon the clerk of the court shall cause to be published at least once a week for 2 successive calendar weeks in a newspaper of general circulation in the county where the petition is filed, with preference given to a newspaper published in the county, a notice stating the time and place fixed by the district court when and where the hearing on the petition will be had and containing a brief statement of the matters set forth in the petition and the object thereof. If any portion of the lands sought to be excluded from the district lies within any other county or counties, the notice shall also be published as provided above in a newspaper of general circulation in the other county or counties, with preference given to a newspaper published in the other county or counties. The first publication of the notice may not be less than 30 days prior to the time mentioned in the notice for the hearing.

History: **En. Sec. 3, Ch. 132, L. 1935; re-en. Sec. 7194.3, R.C.M. 1935; amd. Sec. 23, Ch. 460, L. 1977; R.C.M. 1947, 89-1411.**

Cross-References

General duties of Clerk of District Court, 3-5-501.

Publication of legal notices, Title 18, ch. 7, part 2.

85-7-1824. Conduct of hearing. At the time specified in the notice, the district court in which the petition is filed shall hear the petition but may adjourn such hearing from time to time not exceeding 2 weeks in all. The court, upon application of the petitioners, shall permit the petition to be amended and may order further or additional notice to be given. Upon such hearing, all persons interested whose lands or rights may be damaged or benefited by the granting of the petition or the exclusion of the lands from the district may appear and contest the same, and the contestants and petitioners may offer any competent evidence in regard thereto.

History: **En. Sec. 4, Ch. 132, L. 1935; re-en. Sec. 7194.4, R.C.M. 1935; R.C.M. 1947, 89-1412.**

Cross-References
District Court jurisdiction, Title 3, ch. 5, part 3.

85-7-1825. Court order and relief granted. (1) The court may grant such petition in whole or in part and may make an order making such changes in the boundaries of the district by the exclusion of such lands therefrom as the court may deem advisable or as fact, right, and justice may require. Upon making such order excluding any lands from the district the lands so excluded shall not be liable for further assessments by the district authorities for any purpose and shall be without right to claim any interest in the water rights, canals, or other property of the district.

(2) Such order shall be conclusive upon all owners of lands within the district and shall be final unless appealed from to the supreme court within 60 days from the entry of said order. For the purpose of such appeal, such order shall be regarded as a final judgment of said district court. A copy of said order duly certified by the clerk of court shall be filed for record within 30 days after such order is made and entered with the county clerk and recorder of the county wherein lands included within such district are situated.

History: En. Secs. 5, 6, Ch. 132, L. 1935; re-en. Secs. 7194.5, 7194.6, R.C.M. 1935; R.C.M. 1947, 89-1413, 89-1414.

Cross-References
Supreme Court jurisdiction, Title 3, ch. 2, part 2.
Jurisdiction of judges coextensive with state, 3-5-312.

85-7-1826. Interpretation of provisions. (1) Sections 85-7-1821 through 85-7-1826 are intended to supplement but not to repeal or to change in any way the procedure authorized by 85-7-1801 through 85-7-1807 in relation to changing the boundaries of irrigation districts.

(2) The term “owners” as used in 85-7-1821 through 85-7-1826 shall include any executor, administrator, trustee of an express trust, and the guardian of any ward.

History: En. Secs. 7, 8, Ch. 132, L. 1935; re-en. Secs. 7194.7, 7194.8, R.C.M. 1935; R.C.M. 1947, 89-1415, 89-1416(part).

Cross-References
Personal representative — duties and compensation, Title 72, ch. 3, part 6.
UPC — persons under disability, guardianship, and conservatorship, Title 72, ch. 5.
Public Administrator, Title 72, ch. 15.
Trust administration, Title 72, ch. 38.

85-7-1827 through 85-7-1830 reserved.

85-7-1831. Withdrawal of lands to organize separate or consolidated district for cooperation with federal projects — petition. (1) Whenever the holders of title or evidence of title to a part of the lands of an irrigation district organized and existing under the provisions of 85-7-101 through 85-7-103, which lands lie within and are served by an irrigation and/or drainage project constructed, operated, and maintained by the United States, desire a separation of said lands from said irrigation district for the purpose of forming a new district or combining with another existing district in order to cooperate with the United States as provided in 85-7-101 through 85-7-103, said separation, organization of a new district or combination with another existing district may be effected by petitioning the district court of the county in which the lands of the district or the greater portion thereof are situated for an order or decree changing the boundaries of the district by the elimination therefrom of such lands and their incorporation in another existing district or in a new and separate district.

(2) Such changes shall not otherwise impair or affect the organization of the district now including said lands or its rights in or to property or any of its rights or privileges of whatsoever kind or nature, nor shall it affect, impair, or discharge any contract, obligation, lien, or charge for or upon which it was or might become liable or chargeable had such changes not been made.

History: En. Sec. 1, Ch. 98, L. 1933; re-en. Sec. 7187.1, R.C.M. 1935; R.C.M. 1947, 89-1315.

Cross-References
District Court jurisdiction, Title 3, ch. 5, part 3.
Obligations in general, Title 28, ch. 1.
Object of contract, Title 28, ch. 2, part 6.
Liens, Title 71, ch. 3.
Relations with United States, 85-7-1906.

85-7-1832. Petition for withdrawal of lands. The petition for this purpose must be signed by at least 75%, both in number and in acreage, of the holders of title or evidence of title (evidence as provided in 85-7-101 and 85-7-102) of the lands proposed to be eliminated from one district and incorporated in another existing district or in a new and separate district. Such petition must also bear the signature of the secretary of the interior of the United States, approving such proposed changes in district organization. Construction costs and other obligations due or to become due to the United States on account of the lands so separated and the participation of the owners thereof in contracts in effect between the original district and the United States or between the district to be extended by the addition of said lands and the United States shall be fixed and determined by said secretary of the interior.

History: **En. Sec. 2, Ch. 98, L. 1933; re-en. Sec. 7187.2, R.C.M. 1935; R.C.M. 1947, 89-1316.**

Cross-References

Relations with United States, 85-7-1906.
United States contracts — loans, sinking fund, and investment, 85-7-1951.
United States contracts — assessments, 85-7-1952.
United States contracts — court approval required, 85-7-1957.
Power to contract with United States cumulative, 85-7-1958.

85-7-1833. Proceedings subsequent to presenting petition. When said petition is duly presented to the district court, all further proceedings with reference to lands, the owners of which seek to form a new and separate district, shall be as prescribed in 85-7-101 through 85-7-103, 85-7-1504(1), 85-7-1505, and 85-7-1507, and all further proceedings with reference to lands, the owners of which desire that they be incorporated in another existing district, shall be as prescribed in 85-7-1809 and 85-7-1810, insofar as said provisions are not inconsistent with the purposes of 85-7-1831 through 85-7-1833.

History: **En. Sec. 3, Ch. 98, L. 1933; re-en. Sec. 7187.3, R.C.M. 1935; R.C.M. 1947, 89-1317.**

85-7-1834 through 85-7-1836 reserved.

85-7-1837. Limitation on irrigable acreage — special election or petition. (1) The board of commissioners of an irrigation district shall, when authorized as provided in subsection (2), limit the amount of acreage within any farm operation in the district that may be serviced by the district.

(2) In determining whether to impose an acreage limitation on a particular farm operation:

(a) the board of commissioners may submit the question to the qualified electors of the district by election as provided in 85-7-1712; or

(b) the limitation may be imposed based on a petition signed by not less than 60% of landowners representing not less than 60% of the irrigated land within the boundaries of the irrigation district.

(3) If a limitation is imposed by special election or petition, the minimum acreage limit that may be imposed is 960 acres of land owned or leased by a qualified recipient.

(4) An irrigation district that has imposed an acreage limitation may require certification of acreage and designation of excess acreage by the electors. Except as provided in subsection (5), the district may withhold water on all acres designated as excess acres.

(5) A qualified recipient that owns or leases irrigated acreage in excess of the limitation at the time the process of imposing a limitation begins may continue operations without penalty and without having water withheld as long as the ownership or lease remains with the qualified recipient.

(6) The board of commissioners may adopt regulations necessary to administer the provisions of this section.

(7) For the purposes of this section, "qualified recipient" means an individual, married couple, corporation, trust, or partnership that operates as an individual, independent farm operation.

History: **En. Sec. 1, Ch. 87, L. 1995; amd. Sec. 248, Ch. 49, L. 2015; amd. Sec. 1, Ch. 198, L. 2023.**

Cross-References

Elections, Title 85, ch. 7, part 17.

85-7-1838 through 85-7-1840 reserved.

85-7-1841. Fixing of taxable acreage. Whenever any lot, tract, or parcel of land has been heretofore or may hereafter be included within the boundaries of any public irrigation district formed under the laws of this state and the acreage thereof fixed and stated in the decree for the creation of said district or in any other proceeding relating thereto is fixed at a greater number of acres than actually exist within such lot, tract, or parcel of land or at a greater number of acres than can be irrigated from the reclamation system of said district or whenever, from any action or proceeding by or on behalf of said district or its commissioners, any such lot, tract, or parcel of land included therein has been or is about to be assessed from a greater acreage than exists therein or can be irrigated from the reclamation system of said district, the owner or holder of title or evidence of title to said lands, as defined by the irrigation district acts, may have the taxable acreage contained therein fixed and adjudicated as provided for by 85-7-1841 through 85-7-1845. However, if any bonds have been issued with the approval and pursuant to confirmation by the court then no proceeding for the determination of the acreage shall be allowed to alter or reduce in any manner the acreage subject to the lien of such bonds, in principal or interest, or of the taxes or assessments to meet the interest or principal thereof while such bonds or the interest thereon are unpaid in whole or in part. Such proceeding may still be allowed to correct or determine acreage subject to taxes or assessments for maintenance and current expenses and insofar as the latter only are to be affected.

History: En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 3, Ch. 145, L. 1915; re-en. Sec. 7190, R.C.M. 1921; amd. Sec. 3, Ch. 54, L. 1923; re-en. Sec. 7190, R.C.M. 1935; R.C.M. 1947, 89-1404.

Cross-References

Evidence of title, 85-7-102.
Board powers over district property, 85-7-1908.
Purposes for which bonds may be issued, 85-7-2012.

85-7-1842. Petition for fixing of taxable area. The owner or holder of title or evidence of title, as defined by the irrigation district acts, may file in the district court of the county wherein said lands are situated a petition praying that the acreage of the lands set forth and described in such petition may be permanently fixed and adjudicated, which petition shall set forth:

(1) the name or names of the owner or owners, holder of title or evidence of title thereto, who shall be the party or parties plaintiff therein;

(2) the names and kind and character of interest of every person owning, holding, or claiming any right, title, or interest in or to the lands described in said petition, who shall, where they do not appear as parties plaintiff under subsection (1), sit as parties defendant;

(3) the name of the district in which said lands are included, together with the name of the board of commissioners thereof and the secretary thereof, and said district, its commissioners and secretary shall be made parties defendant therein;

(4) a statement of the substance of all proceedings, orders, and decrees creating said districts and fixing the acreage of the lands therein described, together with any proceedings of the board of commissioners of said district or its officers relating to the acreage thereof, to such extent as to fully inform the court of the manner and extent to which said lands have been included and taxed or assessed in said district;

(5) the actual acreage of the lands described as irrigable from the reclamation system of said district;

(6) the excess of acreage complained of;

(7) the amount of taxes previously paid on such excess acreage;

(8) a general statement of the exact nature of the relief sought and the grounds therefor.

History: En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 3, Ch. 145, L. 1915; re-en. Sec. 7191, R.C.M. 1921; amd. Sec. 3, Ch. 54, L. 1923; re-en. Sec. 7191, R.C.M. 1935; R.C.M. 1947, 89-1405.

Cross-References

Property tax levies, Title 15, ch. 10.
Definitions and kinds of estates in real property, Title 70, ch. 15.
Creation of irrigation districts by percentage of titleholders, 85-7-101.
Evidence of title, 85-7-102.
Bonds for Commissioner and secretary, 85-7-1504.

85-7-1843. Summons, publication, and court determination. (1) Upon the filing of such petition, summons shall be issued thereon and served upon all parties defendant thereto, with a copy of the petition attached thereto, in the same manner and in the same form as issued in civil actions. Whenever any necessary party thereto cannot, after due diligence, be found within the state of Montana, service upon such party or parties may be had by publication of a summons, which shall be obtained, issued, and published in the same manner as a published summons in a civil action.

(2) The provisions of Title 25 and the rules of pleading and practice applicable to civil actions generally shall apply, so far as applicable, to this proceeding.

(3) If the allegations to such petition be denied, the district court shall, when the time for appearance of the parties defendant thereto has expired and said parties have appeared by answer or made default, proceed to hear and determine the issues in said proceedings as joined.

History: **En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 3, Ch. 145, L. 1915; re-en. Sec. 7192, R.C.M. 1921; amd. Sec. 3, Ch. 54, L. 1923; re-en. Sec. 7192, R.C.M. 1935; R.C.M. 1947, 89-1406.**

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

85-7-1844. Decree fixing amount of irrigable acreage. Upon the hearing of said petition, the court shall, by its decree, fix and determine the irrigable acreage contained in the lots, tracts, or parcels of land complained of. The acreage so fixed by such decree shall be the acreage upon which all assessments of said lands in said irrigation district shall thereafter be based. Upon said hearing the court shall determine the amount of taxes, if any, which have theretofore been levied and assessed upon any excess or nonexistent acreage and shall enter judgment in favor of the owner or holder thereof and against said district for the excess of taxes theretofore collected by said district or shall cancel such excess if the same shall not have been collected for the benefit of said district. However, no judgment for the recovery of excess taxes paid shall be entered against any district until there shall have been deducted therefrom any unpaid valid taxes and assessments levied and assessed for the benefit of said district against the lands described in said petition, and all sums so recovered shall bear interest at the rate of 8% per annum from the date of payment by the landholder. Said judgment shall bear legal interest from the date of entry, and the judgment so rendered may be paid by warrants or funds of said future taxation upon said lands. Costs shall be allowed to the plaintiff in the same manner as other civil actions.

History: **En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 4, Ch. 145, L. 1915; re-en. Sec. 7193, R.C.M. 1921; re-en. Sec. 7193, R.C.M. 1935; R.C.M. 1947, 89-1407.**

Cross-References

Property tax levies, Title 15, ch. 10.
Costs, Title 25, ch. 10.
All irrigable lands chargeable alike, 85-7-2103.

85-7-1845. Appeal to supreme court. From any such judgment or decree an appeal may be taken to the supreme court by any party thereto at any time within 10 days of the entry of said judgment or decree. Such appeal shall be taken, perfected, and heard in the manner prescribed by Title 25 governing appeals from the district court to the supreme court. If no such appeal be taken within the time aforesaid or, if taken, the judgment or decree of the district court shall be affirmed by the supreme court, such judgment or decree shall be forever conclusive upon the parties thereto. In case contract has been made between the district and the United States, as provided in 85-7-1906, no change shall be made in the boundaries of the district, and the district court shall make no order changing the boundaries of the district until the secretary of the interior shall assent thereto in writing and such assent be filed with the district court.

History: **En. Sec. 24, Ch. 146, L. 1909; amd. Sec. 4, Ch. 145, L. 1915; re-en. Sec. 7194, R.C.M. 1921; re-en. Sec. 7194, R.C.M. 1935; R.C.M. 1947, 89-1408.**

Cross-References

Supreme Court jurisdiction, Title 3, ch. 2, part 2.

85-7-1846. Terminated. Sec. 5, Ch. 306, L. 1997.

History: **En. Sec. 1, Ch. 306, L. 1997.**

Part 19
Operation of Districts

Part Cross-References

Conservation districts — operation, Title 76, ch. 15, part 4.
Drainage districts — organization and operation, Title 85, ch. 8, part 3.
Conservancy districts — organization and procedure, Title 85, ch. 9, part 4.

85-7-1901. Board plan for acquisition and construction. (1) For the purpose of purchasing or constructing the necessary irrigation canals or works or acquiring the necessary property and rights for canals or works and otherwise carrying out the provisions of this chapter, the board of commissioners of any irrigation district shall, as soon as practicable after the district has been organized, formulate a general plan for the purchase, construction, and acquisition of the property. The board shall cause surveys, examinations, and plans to be made that demonstrate the practicability of the plans, as well as of procuring water from other and different sources and the amount of land that can be irrigated under the plan, and shall furnish the proper basis for an estimate of the cost of carrying out the plan and the value of any canal, works, property, or system of irrigation proposed to be purchased.

(2) All surveys, examinations, maps, plans, and estimates must be made by or under the direction and supervision of an irrigation engineer of well-known standing and competency, and all necessary surveys, examinations, maps, plans, and estimates must be certified to by the engineer. When the surveys, examinations, maps, plans, and estimates are completed, the engineer shall submit them with all proper field notes to and file them with the board of commissioners, accompanied by the engineer's report and recommendation. This report must include a discussion of the plans submitted by the engineer to the board, of the question of water supply, of the sufficiency of the works proposed to accomplish the desired results, of the practicability of the proposed system from an engineering standpoint, and of the probability of being acquired or constructed within the estimate of the cost stated and a general discussion and recommendation in regard to the engineering and financial features of the whole matter that in the judgment of the engineer is desirable for the information of the people of the district. The report must be accompanied by a map when a map is necessary for a proper explanation or understanding of the report and recommendation.

(3) Upon receiving the report, the board of commissioners shall proceed to determine the amount of money necessary to be raised for the purchase or construction of the proposed property, canals, or irrigation works and system and within 10 days after arriving at that determination shall cause the secretary of the board to notify all persons or corporations holding title or evidence of title to lands within the district, determined as provided in 85-7-101 and 85-7-102, of the filing of the report and their determination on the report. The notices must be given through the United States mail by letter addressed to the person or corporation at the last-known post-office address of each person or corporation. A certificate of the secretary of the board as to the fact of mailing the notice, affixed to a copy of the notice and recorded in the record book of the board of commissioners, is sufficient and conclusive evidence of mailing.

History: En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; R.C.M. 1947, 89-1301(12); amd. Sec. 2791, Ch. 56, L. 2009.

Cross-References

Engineers and land surveyors, Title 37, ch. 67.

Utilization of water, Title 85, ch. 2, part 4.

85-7-1902. Management of district by board. (1) The board of commissioners of every irrigation district established and organized under and by virtue of parts 1 and 15 of this chapter shall constitute the corporate authority of said district.

(2) The board shall have the power and it shall be the duty of the members thereof to manage and conduct the business and affairs of the district; adopt a corporate seal therefor; make and execute all necessary contracts; and employ and appoint such agents, officers, and employees as may be required and prescribe their duties.

(3) The board is hereby authorized and empowered to institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this chapter, or to enforce, maintain, protect, or preserve any and all rights, privileges, and immunities created by this chapter or acquired in pursuance thereof. In all courts, suits, or proceedings, the board may sue, appear, and defend in person or by attorneys and in the name of such irrigation district.

(4) The board may adopt rules and bylaws governing the calling and holding of meetings of the board; the manner of transacting business thereat; and the publishing or posting of the orders, resolutions, and proceedings of the board. It shall be the duty of said board to pass or

adopt bylaws and rules for the apportionment and distribution of water to the lands of the district and for the protection and preservation of the works and other property of the district, and the board may therein require the prompt payment of all current and delinquent taxes and assessments and other financial obligations owing the district as a prerequisite to water service. The bylaws and rules shall be printed in convenient form for distribution in the district. All orders and resolutions shall be passed or adopted by a majority of the commissioners by a yea and nay vote, to be entered upon the records of the board.

(5) Said board shall have power generally to do and perform all such other acts as shall be necessary or appropriate to fully carry out the purposes of this chapter.

History: **En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; R.C.M. 1947, 89-1301(intro.), (1), (10), (11), (13); amd. Sec. 1, Ch. 262, L. 1983.**

Cross-References

Organization of Board of Commissioners and establishment of office, 85-7-1502.

85-7-1903. Entry upon land by board or agent. The board and its agents and employees shall have the right to enter upon any land to make surveys and may locate the necessary irrigation works, including drainage works and the line for any canal or canals and necessary branches for the same, on any lands which in the judgment of the board may be deemed best suited for such location.

History: **En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; R.C.M. 1947, 89-1301(2).**

Cross-References

Surface water and ground water — entry on land, 85-2-115.

85-7-1904. Acquisition of water and waterworks by board. (1) The board may:

(a) appropriate water in the name of the district;

(b) acquire, by purchase, lease, or contract:

(i) water and water rights;

(ii) additional water and supplies of water; and

(iii) canals, reservoirs, dams, and other works already constructed or in the course of construction; and

(c) acquire by purchase, lease, contract, condemnation pursuant to Title 70, chapter 30, or other legal means:

(i) land and rights in lands for rights-of-way, for reservoirs, for the storage of waters, and for dam sites and necessary appurtenances; and

(ii) other lands and property that may be necessary for the construction, use, maintenance, repair, improvement, enlargement, and operation of any district or subdistrict system of irrigation works.

(2) The board may contract with the owner or owners of canals, reservoirs, dams, and other works purchased and in the course of construction for the completion of the works.

(3) A purchase, lease, or contract for purchase of any water, water rights, canals, reservoirs, reservoir sites, dam sites, irrigation works, or other property of any nature or kind or for the making or purchasing of surveys, maps, plans, estimates, and specifications or for the purchase of machinery for pumping plants or for the erection of buildings, aqueducts, and other structures necessarily used in connection with the pumping plants, for a price or rental in excess of $150,000 or 25% of the district's annual operation and maintenance budget, whichever is greater, may not be entered into by the district without the written consent or petition of at least a majority in number and acreage of the holders of title or evidence of title to the lands within the district or, if the purchase, lease, or contract substantially benefits a subdistrict in the district, by a majority in number and acreage of the holders of title or evidence of title to lands within the subdistrict. Any splitting or division of a purchase, lease, or contract with the purpose or intention of avoiding or circumventing the provisions of this section renders the divided or split contract or contracts void.

History: **En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; R.C.M. 1947, 89-1301(3), (5); amd. Sec. 4, Ch. 326, L.**

1979; amd. Sec. 7, Ch. 112, L. 1981; amd. Sec. 1, Ch. 328, L. 1983; amd. Sec. 1, Ch. 165, L. 1987; amd. Sec. 8, Ch. 439, L. 1989; amd. Sec. 106, Ch. 125, L. 2001.

Cross-References

Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.
Management of property — water contracts, 85-1-211.
Utilization of water, Title 85, ch. 2, part 4.

85-7-1905. Board agreements for joint operations or cooperation. (1) The board shall have power and authority to enter into and do any acts necessary or proper for the performance of any agreements with any state, county, district of any kind, public or private corporation, association, firm, or individual, or any number of them for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair, or operation of any rights, works, or other property of a kind which might lawfully be acquired or owned by the irrigation district.

(2) The board may acquire the right to store water in any reservoir or to carry water through any canal, ditch, or conduit not owned or controlled by the district and may grant to any owner or lessee of the right to the use of any water the right to store such water in any reservoir of the district or to carry such water through any canal, ditch, or conduit of the district.

History: En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; R.C.M. 1947, 89-1301(4).

Cross-References

Joint operations, Title 85, ch. 7, part 16.

85-7-1906. Relations with United States. (1) For the purpose of acquiring control over government land within the district and of complying with the provisions of the act of congress of August 11, 1916, the board shall have authority to make such investigations and base thereon such representations and assurances to the secretary of the interior as may be requisite.

(2) The board may enter into any obligation or contract with the United States:

(a) for the construction, operation, and maintenance of the necessary works for the delivery and distribution of water therefrom and the necessary drainage works;

(b) for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands, under the provisions of the federal Reclamation Act of June 17, 1902, all acts amendatory thereof or supplementary thereto, and the rules and regulations established thereunder; or

(c) for a water supply under any act of congress providing for or permitting such contract.

(3) In case contract has been or may hereafter be made with the United States as herein provided, bonds of the district may be deposited with the United States at 90% of their par value, to the amount to be paid by the district to the United States under any such contract. The interest on said bonds of the district and regularly paid to the United States is to be applied as provided in such contract. If bonds of the district are not so deposited, it shall be the duty of the board of commissioners to include, as part of any levy or assessment provided for in 85-7-2101 or 85-7-2132, an amount sufficient to meet each year all payments accruing under the terms of any such contract. The board may accept, on behalf of the district, appointment of the district as fiscal agent of the United States or authorization of the district by the United States to make collections of money for or on behalf of the United States in connection with any federal reclamation project, whereupon the district shall be authorized to so act and to assume the duties and liabilities incident to such action. The board shall have full power to do all things required by the federal statutes now or hereafter enacted in connection therewith and all things required by the rules and regulations now or that may hereafter be established by any department of the federal government in regard thereto, including the power to require the prompt payment of all charges as prerequisite to water service.

History: En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; R.C.M. 1947, 89-1301(6), (7); amd. Sec. 5, Ch. 326, L. 1979.

Cross-References

Contracts — object of contract, Title 28, ch. 2, part 6.
Contracts with state agencies and counties, 85-1-224.
Limitations on debt-incurring power, 85-7-2001.

85-7-1907. Board power to provide sufficient water. The board may also construct and maintain the necessary dams, reservoirs, and works for the collection and distribution of water for the district or any subdistrict in the district, from one or more sources and from different and additional sources; operate such works; secure, in any of the manners provided in this chapter, additional water supplies from the same or different sources; and do any and every lawful act necessary to be done in order that sufficient water may be furnished for irrigation purposes to all the lands in the district or subdistrict included at the time of its organization or at any time thereafter.

History: En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; R.C.M. 1947, 89-1301(8); amd. Sec. 9, Ch. 439, L. 1989.

Cross-References

Transfer of real property, Title 70, ch. 20.

85-7-1908. Board powers over district property. (1) The board may take conveyances or other assurances for all property acquired by it under the provisions of this chapter, in the name of the district, to and for the uses and purposes in this chapter.

(2) The legal title to all property acquired by or for any irrigation district or any subdistrict in the district under the provisions of this chapter shall immediately and by operation of law vest in that district, as set forth in this chapter. The board of commissioners may hold, use, maintain, acquire, manage, occupy, and possess that property, as provided in this chapter. Any property acquired by the district may be conveyed to the United States for the construction, operation, and maintenance of works by the United States for the benefit of the district or a subdistrict in the district under any contract that may be entered into with the United States pursuant to this chapter.

History: (1)En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; Sec. 89-1301, R.C.M. 1947; (2)En. Sec. 30, Ch. 146, L. 1909; amd. Sec. 5, Ch. 153, L. 1917; re-en. Sec. 7200, R.C.M. 1921; re-en. Sec. 7200, R.C.M. 1935; Sec. 89-1605, R.C.M. 1947; R.C.M. 1947, 89-1301(9), 89-1605; amd. Sec. 10, Ch. 439, L. 1989.

85-7-1909. Rights-of-way for irrigation works. (1) The board of commissioners shall have the power to construct irrigation works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch, or flume which the route of said canal or canals may intersect or cross in such manner as to afford security to life and property. Said board shall restore the same, when so crossed or intersected, to its former state, as near as may be, so as not to destroy its usefulness. Every company whose railroad shall be intersected or crossed by said works shall unite with said board in forming said intersection and crossing, and if such railroad company or the owners and controllers of said property, thing, or franchise so to be crossed and said board cannot agree upon the amount to be paid therefor or the points or the manner of said crossing or intersections, the same shall be ascertained and determined in all respects as herein provided in respect to taking of land for public use.

(2) Nothing contained herein shall require the payment to the state or any subdivision thereof of any sum for the right to cross any public highway with any such works. The right-of-way is hereby given, dedicated, and set apart to locate, construct, and maintain said works over and through any of the lands which are now or hereafter may be the property of this state.

History: En. Sec. 26, Ch. 146, L. 1909; re-en. Sec. 7196, R.C.M. 1921; re-en. Sec. 7196, R.C.M. 1935; R.C.M. 1947, 89-1601.

Cross-References

Construction across streams, highways, or other obstacles, 85-1-208.

85-7-1910. Board power to dispose of district property. (1) The board of commissioners may, with the written consent of a majority in number and acreage of the owners of the lands in the district or, if the leased property substantially benefits a subdistrict in the district, of a majority in number and acreage of the owners of lands within the subdistrict, lease in whole or in part the system of canals and works or water belonging to the district, whenever the leasing is considered for the benefit of the district or subdistrict, if the leased property substantially benefits the subdistrict. When the board contemplates the leasing of the canals or works or water of a district or subdistrict, it shall declare the availability of the lease by resolution or order and give notice by publication in a newspaper published in the county in which the office of that irrigation district is situated at least 2 calendar weeks prior to the making of any lease. A lease may not be made unless a majority in number and acreage of the holders of title or evidence of title to the lands in the district or, if the lease substantially benefits a subdistrict, a majority in number and acreage of the holders of title or evidence of title to lands within the subdistrict, file with the board a written consent to make the lease. The lease may not interfere with any rights that have been established by law at the time the lease is made, nor may the lease operate to deprive any owner or owners of land in the district of the use of water from the works upon the lands. The board of commissioners shall require a sufficient bond to secure the faithful performance of the lease by the lessee.

(2) In addition to all other powers granted to any irrigation district existing under the laws of Montana for the purpose of securing financial aid in any form from the department of natural resources and conservation, an irrigation district may convey, assign, transfer, and set over to the department all or any part of its property, including all water rights, rights-of-way, and easements for reservoirs, reservoir sites, canals, ditches, laterals, and headgates, that may be required by the department as a condition to furnishing financial aid or assistance.

(3) If an irrigation district has ceased operation, the district prior to its dissolution may convey, assign, transfer, and set over to any person or association of persons all or any part of its property described in subsection (2), for the purpose of irrigating and reclaiming any or all other land that can be served and irrigated.

History: (1)En. Sec. 29, Ch. 146, L. 1909; re-en. Sec. 7199, R.C.M. 1921; re-en. Sec. 7199, R.C.M. 1935; Sec. 89-1604, R.C.M. 1947; (2)En. Sec. 1, Ch. 191, L. 1937; amd. Sec. 166, Ch. 253, L. 1974; Sec. 89-1905, R.C.M. 1947; (3)En. Sec. 2, Ch. 191, L. 1937; Sec. 89-1906, R.C.M. 1947; R.C.M. 1947, 89-1604, 89-1905, 89-1906; amd. Sec. 11, Ch. 439, L. 1989; amd. Sec. 304, Ch. 42, L. 1997.

Cross-References

Guaranty — general provisions, Title 28, ch. 11, part 1.
Landlord and tenant — commercial property, Title 70, ch. 26, part 2.
Acquisition of property by Department, 85-1-209.
Disposal of property by Department to other public bodies, 85-1-210.
Management of property — water contracts, 85-1-211.
Construction capital projects funds, 85-1-322.

85-7-1911. Apportionment of water by board. (1) The board of commissioners shall apportion the water for irrigation among the lands in the district or a subdistrict in the district in a just and equitable manner, and the maximum amount apportioned to any land shall be the amount that can be beneficially used on the land. The amount of water is appurtenant to the land and inseparable from it but subject to reduction as provided in this chapter.

(2) In the event of a shortage of water, the amount of water delivered to each particular tract or piece of land shall be reduced proportionately.

(3) All surplus water belonging to the district may be sold or disposed of by the board for the benefit of the district or for the benefit of a subdistrict if the surplus water is derived from water that attaches to the substantial benefit of the subdistrict.

(4) All water, the right to the use of which is acquired by the district under any contract with the United States, shall be distributed and apportioned by the district in accordance with the acts of congress, the rules and regulations of the secretary of the interior, and the provisions of the contract.

History: (1)En. Sec. 32, Ch. 146, L. 1909; amd. Sec. 6, Ch. 145, L. 1915; re-en. Sec. 7202, R.C.M. 1921; re-en. Sec. 7202, R.C.M. 1935; amd. Sec. 1, Ch. 314, L. 1977; Sec. 89-1607, R.C.M. 1947; (2)En. Sec. 33, Ch. 146, L. 1909; amd. Sec. 7, Ch. 145, L. 1915; re-en. Sec. 7203, R.C.M. 1921; re-en. Sec. 7203, R.C.M. 1935; Sec. 89-1608, R.C.M. 1947; (3), (4)En. Sec. 34, Ch. 146, L. 1909; amd. Sec. 8, Ch. 145, L. 1915; re-en. Sec. 7204, R.C.M. 1921; re-en. Sec. 7204, R.C.M. 1935; Sec. 89-1609, R.C.M. 1947; R.C.M. 1947, 89-1607, 89-1608, 89-1609; amd. Sec. 12, Ch. 439, L. 1989.

Cross-References

Utilization of water, Title 85, ch. 2, part 4.

85-7-1912. Exchange of water by board. (1) Whenever any canal constructed, owned, or controlled by the district crosses any creek, stream, water channel, or watercourse, the water of which is used to irrigate land lying below the canal, the district may contract with the owner or owners of the right to the use of the water or waters in the stream, creek, water channel, or watercourse for an exchange of water and to supply the owner with water from the district system. The contract must be in writing, signed and acknowledged by all the parties before an officer authorized to take acknowledgments, and must be filed and recorded in the office of the clerk and recorder of the county in which the creek, stream, water channel, or watercourse is situated. The acknowledgment must be certified by the officer in the manner that deeds are required to be certified to entitle them to be recorded. After recording, the district may supply the land below the canal, whether the land is included in the district or not, with water from the works of the district, and the owner or lessee of the land must be furnished with the same quantity of water as that to which the owner or lessee would be entitled out of the creek, stream, water channel, or watercourse if the district works had not been built.

(2) The district may appropriate and take possession of the water replaced and has the same right to that water as the owner or lessee of the land had as long as the water is replaced by a like quantity of water from the works. The appropriating and taking of the water by the district may not deprive the owner or lessee of the right to retake and use the water if the owner or lessee at any time is prevented from having or using the same quantity of water from the works. The district also has the right to make appropriation and take possession of the water at any point and to sell, lease, or use the water on any land, either above or below the canal, and the appropriation of the water at any point or selling, leasing, or using the water may not prejudice the right of the district to the water and may not increase the rights of the owner or owners of any other water right on the creek, stream, water channel, or watercourse.

(3) All water, the right to the use of which is acquired by the district under any contract with the United States, must be distributed and apportioned by the district in accordance with the acts of congress, the rules and regulations of the secretary of the interior, and the provisions of the contract.

History: **En. Sec. 36, Ch. 146, L. 1909; amd. Sec. 9, Ch. 145, L. 1915; re-en. Sec. 7206, R.C.M. 1921; re-en. Sec. 7206, R.C.M. 1935; R.C.M. 1947, 89-1611; amd. Sec. 2792, Ch. 56, L. 2009.**

Cross-References

Management of property — water contracts, 85-1-211.
Utilization of water, Title 85, ch. 2, part 4.

85-7-1913. Board to maintain records. (1) The board of commissioners shall keep a complete book and record of the accounts, records, contracts, securities, minutes of meetings, and other matters of every kind pertaining to or belonging to the irrigation district in the form prescribed by the department of administration. The department of administration shall prescribe forms for the use of irrigation districts. The books and records must be open to the inspection of any landowner of the district the same as other public records.

(2) The books and records of irrigation districts are subject to audit in accordance with 2-7-503.

(3) If a district is appointed fiscal agent of the United States or is authorized by the United States to make collections for or on behalf of the United States in connection with a federal irrigation project, the board of commissioners or its secretary shall at any time allow any officer or employee of the United States, when acting under the orders of the secretary of the interior, to have access to all books, records, and vouchers of the district that are in possession or control of the secretary or board.

(4) The failure of the board of commissioners to comply with 85-7-1914 or this section is grounds for removal from office, and the county attorney of any county in which the irrigation district is situated shall prosecute ouster proceedings against any commissioner or commissioners. The cost of the proceedings is a charge against the irrigation district and must be paid as are other bills against the districts.

History: **En. Sec. 65, Ch. 146, L. 1909; amd. Sec. 21, Ch. 145, L. 1915; amd. Sec. 1, Ch. 212, L. 1921; re-en. Sec. 7260, R.C.M. 1921; re-en. Sec. 7260, R.C.M. 1935; amd. Sec. 2, Ch. 195, L. 1945; amd. Sec. 4, Ch. 256, L. 1971; amd. Sec. 105, Ch. 348, L. 1974; amd. Sec. 52, Ch. 213, L. 1975; R.C.M. 1947, 89-2107(1), (2), (4); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 12, Ch. 179, L. 1995; amd. Sec. 215, Ch. 483, L. 2001.**

Cross-References

Right of public participation in government, Art. II, sec. 8, Mont. Const.
Public participation in governmental operations, Title 2, ch. 3.
Audits of political subdivisions, Title 2, ch. 7, part 5.
County Attorney — other duties, 7-4-2717.

85-7-1914. Board to file annual report. The board of commissioners shall annually file with the county clerk and recorder of the county in which the district is located, within 10 days after March 1 of each year, a sworn report showing the assets and liabilities of the district, the amount of money received during the preceding year, and the amount spent during that time and shall publish the report at least once in a newspaper of the county.

History: En. Sec. 65, Ch. 146, L. 1909; amd. Sec. 21, Ch. 145, L. 1915; amd. Sec. 1, Ch. 212, L. 1921; re-en. Sec. 7260, R.C.M. 1921; re-en. Sec. 7260, R.C.M. 1935; amd. Sec. 2, Ch. 195, L. 1945; amd. Sec. 4, Ch. 256, L. 1971; amd. Sec. 105, Ch. 348, L. 1974; amd. Sec. 52, Ch. 213, L. 1975; R.C.M. 1947, 89-2107(3).

Cross-References

Role and duties of County Clerk and Election Administrator, 7-4-2611.
Publication of legal records, Title 18, ch. 7, part 2.
Required records and audits, 85-7-1616.

85-7-1915 through 85-7-1920 reserved.

85-7-1921. Distribution system defined. The words "distribution system", as used in 85-7-1922 through 85-7-1925, denotes the entire works and property of all irrigation districts, including main ditches and canals, laterals, bilaterals, headgates, flumes, spillways, boxes, and all other appliances and means by which the waters of any irrigation district, including a subdistrict in the district, are or shall be apportioned or distributed for use.

History: En. Sec. 1, Ch. 63, L. 1935; re-en. Sec. 7207.1, R.C.M. 1935; R.C.M. 1947, 89-1613; amd. Sec. 13, Ch. 439, L. 1989.

Cross-References

Works defined, 85-1-102.

85-7-1922. Regulation, supervision, apportionment, and control of water distribution. (1) In addition to all other powers granted them by the laws of Montana, boards of commissioners of all irrigation districts organized under any law of this state may regulate, supervise, apportion, and control the furnishing and delivery of water through the distribution system of the district. The authority to regulate, supervise, apportion, and control does not apply to users who have water rights or ditch rights, established, acquired by court decree, use, appropriation or otherwise, at the time or prior to the organization of the district, without regard to whether the distribution system or a portion of the system belongs to the district or to the owner of lands served by the district.

(2) Notwithstanding the provisions of 85-7-1921 and the powers granted to the board of commissioners under subsection (1) of this section, the irrigation district is not required to:

(a) construct, operate, or maintain internal delivery systems; or

(b) divide irrigation water after the water is delivered to the established project delivery points.

History: En. Sec. 2, Ch. 63, L. 1935; re-en. Sec. 7207.2, R.C.M. 1935; R.C.M. 1947, 89-1614; amd. Sec. 4, Ch. 136, L. 1993.

Cross-References

Rights and duties of water users, Title 85, ch. 5, part 3.
Water ditches under joint or corporate control, Title 85, ch. 5, part 4.
Board of Control — powers and duties, 85-7-1612.

85-7-1923. Entry on land. In carrying out the authority granted them by 85-7-1921 through 85-7-1925, it shall be lawful for boards of commissioners of irrigation districts to enter upon the lands of any user of water supplied by said district for the purpose of installing, adjusting, or regulating headgates, lock boxes, or other devices for regulating the flow of water or apportioning the equitable distribution thereof.

History: En. Sec. 3, Ch. 63, L. 1935; re-en. Sec. 7207.3, R.C.M. 1935; R.C.M. 1947, 89-1615.

Cross-References

Surface water and ground water — entry on land, 85-2-115.

85-7-1924. Interference with commissioners or distribution system — penalty. A person who in any manner interferes with the commissioners of an irrigation district or their lawful agent or employee in the carrying out of the powers conferred by 85-7-1921 through 85-7-1925 or who changes or tampers with any lock box, headgate, or other device for the apportionment or distribution of water installed by or under the authority of the commissioners or who in any manner obstructs or changes the flow of water in the distribution system of any irrigation district without authority of the commissioners of the district is, in the discretion of the commissioners, subject to a forfeiture of the person's right to the delivery of water through the distribution system of the district as long as the acts continue and is guilty of obstructing a public officer or criminal mischief, as appropriate, and is punishable as provided by 45-6-101 or 45-7-302, as applicable.

History: **En. Sec. 4, Ch. 63, L. 1935; re-en. Sec. 7207.4, R.C.M. 1935; amd. Sec. 24, Ch. 460, L. 1977; R.C.M. 1947, 89-1616; amd. Sec. 2793, Ch. 56, L. 2009.**

Cross-References

Prevention of waste, 85-2-114.
Rights and duties of water users, Title 85, ch. 5, part 3.
Water ditches under joint control — interference with actions of Commissioner, 85-5-406.

85-7-1925. Installing and assessing costs of distributing or measuring devices. Whenever, in the judgment of the commissioners of any irrigation district, it is necessary for the proper measurement, distribution, or apportionment of the water of the district to install lock boxes, headgates, or other devices for the distribution of water at the point where any lateral is taken out of a main ditch or canal or at a point where any sublateral is taken out of a lateral for further division or distribution of water, they shall have the authority to procure and install the same and to assess the cost thereof against the lands affected thereby.

History: **En. Sec. 5, Ch. 63, L. 1935; re-en. Sec. 7207.5, R.C.M. 1935; R.C.M. 1947, 89-1617.**

Cross-References

Department powers and duties, 85-2-113.
Duty of purchaser to dig ditches, 85-2-416.
Distribution of water and related expenses, 85-5-201.

85-7-1926 through 85-7-1930 reserved.

85-7-1931. Use of water for irrigation a public use. (1) The use of all water required for the irrigation of the land of any district formed under the provisions of part 1, together with the rights-of-way for canals and ditches, sites for reservoirs, and all property required in fully carrying out the provisions of this chapter, is hereby declared to be a public use, subject to the regulations and control of the state in the manner prescribed by law.

(2) All water, the right to the use of which is acquired by the district under any contract with the United States, shall be distributed and apportioned by the district in accordance with the acts of congress, the rules and regulations of the secretary of the interior, and the provisions of said contract in relation thereto.

History: **En. Sec. 31, Ch. 146, L. 1909; amd. Sec. 5, Ch. 145, L. 1915; re-en. Sec. 7201, R.C.M. 1921; re-en. Sec. 7201, R.C.M. 1935; R.C.M. 1947, 89-1606.**

Cross-References

Public uses enumerated, 70-30-102.

85-7-1932. Noninterference with navigation or water rights. Navigation may not be impeded by the operation of this chapter. A vested interest in or to any mining or agricultural water rights or ditches or in or to any water rights, reservoirs, or dams now used beneficially in connection with any mining or agricultural industry or by persons purchasing or renting the use of the interest or in or to any other property used, directly or indirectly, in carrying on or in promoting the mining or agricultural industry may not be affected by or taken under this chapter, except that rights-of-way may be acquired over the mining or agricultural property or interest. The right of eminent domain, as provided in Title 70, chapter 30, is not otherwise affected by the provisions of this section.

History: **En. Sec. 27, Ch. 146, L. 1909; re-en. Sec. 7197, R.C.M. 1921; re-en. Sec. 7197, R.C.M. 1935; R.C.M. 1947, 89-1602; amd. Sec. 107, Ch. 125, L. 2001.**

Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.
Interference with navigable water as nuisance, 27-30-101, 45-8-111.
Eminent domain, Title 70, ch. 30.
Navigable waters, 85-1-112.

85-7-1933. Diversion of waters. Nothing herein contained shall be deemed to authorize the diversion of the waters of any river, creek, stream, canal, or ditch from its channel to the detriment of any person or persons having an interest in such river, creek, stream, canal, ditch, or the waters therein.

History: **En. Sec. 28, Ch. 146, L. 1909; re-en. Sec. 7198, R.C.M. 1921; re-en. Sec. 7198, R.C.M. 1935; R.C.M. 1947, 89-1603.**

Cross-References
Right to appropriate, 85-2-301.
Utilization of water, Title 85, ch. 2, part 4.

85-7-1934. Lands under irrigation — inclusion in district. (1) Any land already under irrigation from any source may be included in any irrigation district, either at the time of the organization of such district or at any time thereafter, and such land shall be entitled to receive and shall be given the same amount of water necessarily used thereon at the time of such inclusion. The canals, ditches, flumes, dams, or other works previously used to irrigate such land may be used or supplanted either wholly or in part by the district works. The owner of such land, canals, ditches, flumes, dams, or other works shall be entitled to compensation for any and all damage sustained by reason of the appropriation of the same or by the construction of said district works.

(2) Lands already under irrigation, lands having water rights appurtenant thereto, or lands which can be irrigated from sources more feasible than the district system shall not be included within such district unless the owner of such lands shall consent in writing to have such lands included in said district.

(3) Districts formed to cooperate with the United States may extend their boundaries to include such lands upon petition of the owners of two-thirds only of the acreage of the lands to be included, and the boundaries shall be susceptible of change as provided in 85-7-1808 through 85-7-1811 and 85-7-1841 through 85-7-1845.

(4) All lands having water rights appurtenant thereto which are served by a system of irrigation works supplying more than 10,000 acres of land may, in the discretion of the court, be included in the proposed district, on petition of at least a majority both in number and acreage of the holders of title or evidence of title to the land having water rights appurtenant thereto and served by the same system of irrigation works.

History: En. Sec. 35, Ch. 146, L. 1909; amd. Sec. 6, Ch. 153, L. 1917; amd. Sec. 4, Ch. 116, L. 1919; re-en. Sec. 7205, R.C.M. 1921; re-en. Sec. 7205, R.C.M. 1935; R.C.M. 1947, 89-1610.

Cross-References
Adjudication of water rights, Title 85, ch. 2, part 2.
Creation of districts — generally, Title 85, ch. 7, part 1.
Creation of districts — adjudicated streams, Title 85, ch. 7, part 2.
Creation of districts — sections not applicable, 85-7-304.

85-7-1935. Lands under irrigation — limits on charges for costs. Where lands already under irrigation are included in any district, the water and irrigation works irrigating the same belonging to the owner of said lands, such lands shall not be charged with any tax or assessment for construction or for payment of the interest or principal of any bonds issued to secure money for construction or purchase of the district irrigation works or for any payments other than for operation and maintenance due or to become due under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 85-7-1906, except with the consent of the owner thereof, which consent shall be filed with the recorder of deeds of the county in which such lands are situated. Such lands shall be assessed for administrative and maintenance purposes the same as other lands in the district.

History: En. Sec. 37, Ch. 146, L. 1909; amd. Sec. 10, Ch. 145, L. 1915; re-en. Sec. 7207, R.C.M. 1921; re-en. Sec. 7207, R.C.M. 1935; R.C.M. 1947, 89-1612.

Cross-References
Role and duties of County Clerk and Election Administrator, 7-4-2611.
Taxes and assessments, Title 85, ch. 7, part 21.

85-7-1936 through 85-7-1940 reserved.

85-7-1941. Contracts. (1) The construction by the district of irrigation works may be done by the district, by private owners, or by contract.

(2) Before any contract is let, the board of commissioners shall provide surveys, plans, maps, and estimates, which shall include everything necessary to show the entire cost in detail of everything necessary to complete the work required to irrigate any of the lands in the district under the proposed system.

(3) Notice of any contract to be awarded for the construction of such works shall state where the plans and specifications may be seen and shall be published at least once a week for

3 successive calendar weeks in a newspaper published or of general circulation in the county where the office of the district is located. Sealed bids shall be called for in such published notice, and bids shall be opened in public.

History: **En. Sec. 25, Ch. 146, L. 1909; amd. Sec. 4, Ch. 145, L. 1915; re-en. Sec. 7195, R.C.M. 1921; re-en. Sec. 7195, R.C.M. 1935; R.C.M. 1947, 89-1501(part); amd. Sec. 8, Ch. 112, L. 1981.**

Cross-References

Public contracts generally, Title 18, ch. 1.
Publication of legal notices, Title 18, ch. 7, part 2.
Contracts, Title 28, ch. 2, 3.
Creation of districts — common water supply — sections not applicable, 85-7-304.

85-7-1942. Competitive bidding. The contract shall be awarded only to the lowest responsible bidder, who shall be required to give bond for the faithful performance and completion of the contract. The board shall have the right to reject any and all bids in its discretion.

History: **En. Sec. 25, Ch. 146, L. 1909; amd. Sec. 4, Ch. 145, L. 1915; re-en. Sec. 7195, R.C.M. 1921; re-en. Sec. 7195, R.C.M. 1935; R.C.M. 1947, 89-1501(part).**

Cross-References

State contracts to lowest resident bidder, 18-1-102.
Resident defined, 18-1-103.
Public contracts — bid security, Title 18, ch. 1, part 2.
Creation of districts — common water supply — sections not applicable, 85-7-304.

85-7-1943. Exceptions for certain projects. The provisions of 85-7-1941 and 85-7-1942 shall not apply to:

(1) any contract for the completion of works in course of construction by private owners, from whom said works may be acquired under the provisions of 85-7-1904 or 85-7-1905;

(2) any contract between the district and the United States.

History: **En. Sec. 25, Ch. 146, L. 1909; amd. Sec. 4, Ch. 145, L. 1915; re-en. Sec. 7195, R.C.M. 1921; re-en. Sec. 7195, R.C.M. 1935; R.C.M. 1947, 89-1501(part).**

Cross-References

Contracts with United States, 85-1-221.
Indian and federal water rights, Title 85, ch. 2, part 7.
Creation of districts — common water supply — sections not applicable, 85-7-304.
Change of boundaries of irrigation districts indebted to United States, 85-7-1821.
Withdrawal of lands to organize separate or consolidated district for cooperation with federal projects — petition, 85-7-1831.

85-7-1944 through 85-7-1950 reserved.

85-7-1951. United States contracts — loans, sinking fund, and investment. The board of commissioners of any irrigation district established and organized under and by virtue of the laws of Montana, whenever deemed advisable and to the interest of the district, shall have the power and authority to enter into any obligation or contract with the United States under any act of congress and the rules and regulations established thereunder, providing for or permitting such obligation or contract, for the purpose of obtaining from the United States a loan of money to be used by the district for the liquidation of bonded or other outstanding indebtedness of the district or for doing or causing to be done, under the supervision of the secretary of the interior of the United States, any construction, betterments, or repair work necessary to place the irrigation system of the district in good operating condition. The board shall also have the power and authority to create, by proper levy and collection of assessments, a sinking fund which shall be available for the construction of betterments to the irrigation system of the district, as may become necessary during the term of any contract made hereunder. Said sinking fund for said purpose, which shall be designated the ".... District Sinking Fund for Betterments", shall be in such an amount and shall be created within such time as may be agreed upon between the district and the United States. The board shall also have the power and authority to invest any surplus in the sinking fund herein provided for in legal investments backed, insured, or guaranteed by the United States or the state of Montana, including federal and state agency obligations.

History: **En. Sec. 1, Ch. 24, L. 1931; re-en. Sec. 7264.10, R.C.M. 1935; R.C.M. 1947, 89-2120; amd. Sec. 1, Ch. 166, L. 1987.**

85-7-1952. United States contracts — assessments. In any contract entered into between an irrigation district and the United States hereunder, the board of commissioners shall have the power to levy assessments for the United States contract fund against all of the land within the district for any and all of the purposes enumerated in the laws of Montana and, in addition thereto, the power to levy assessments in compliance with such contract, including such deficiency assessments as will enable the district to meet established or estimated delinquencies in making payments to the United States because of the failure of landowners to pay the assessments levied against their lands in the district.

History: **En. Sec. 2, Ch. 24, L. 1931; re-en. Sec. 7264.11, R.C.M. 1935; R.C.M. 1947, 89-2121.**

85-7-1953. Amount owed United States — lien and special tax. All amounts to be paid to the United States under any contract made pursuant to this part between the district and the United States are a general obligation of the district, and the amounts to be paid to the United States are a lien upon the irrigation system of the district. All lands within the district or added to the district must be subject to a special tax or assessment authorized under 85-7-2104 for the payment of all amounts to be paid to the United States under the contract between the district and the United States. The special tax or assessment constitutes a first and prior lien on the land against which the tax or assessment is levied to the same extent and with like force and effect as taxes levied for state and county purposes.

History: **En. Sec. 3, Ch. 24, L. 1931; re-en. Sec. 7264.12, R.C.M. 1935; amd. Sec. 1, Ch. 83, L. 1955; R.C.M. 1947, 89-2122; amd. Sec. 154, Ch. 584, L. 1999; amd. Sec. 9, Ch. 93, L. 2007.**

85-7-1954. Assumption of operations by United States upon default. In addition to other legal remedies, the board of commissioners of the district shall have the power and authority to provide in any contract executed between the United States and the district hereunder that in case of default for more than 12 months in the payment of any installments due under such contract, the control, operation, and maintenance of the district may, in the discretion of the secretary of the interior, be assumed by the United States and the delivery of water withheld until payments are duly made in accordance with the contract requirements.

History: **En. Sec. 4, Ch. 24, L. 1931; re-en. Sec. 7264.13, R.C.M. 1935; R.C.M. 1947, 89-2123.**

85-7-1955. Liquidation of indebtedness with federal funds. When money is provided by the United States for liquidating bonded indebtedness of any irrigation district, the county treasurer is authorized and empowered to cancel the district bonds so liquidated and surrender them to the United States, taking therefor a receipt signed by the secretary of the interior, which receipt shall be placed in the records of the county treasurer and shall be conclusive evidence of the cancellation and surrender of the district bonds.

History: **En. Sec. 5, Ch. 24, L. 1931; re-en. Sec. 7264.14, R.C.M. 1935; R.C.M. 1947, 89-2124.**

85-7-1956. Majority vote or petition necessary to contract with United States. No contract shall be made with the United States hereunder except upon approval of a majority of those voting on the question at an election conducted pursuant to 85-7-1710, provided that the voting majority must own at least 50% of the acreage included within the district, or upon a petition signed by at least 60% in number and acreage of the holders of title or evidence of title to the lands included within the district. Such petition shall be addressed to the board of commissioners, shall set forth the aggregate amount of money to be borrowed from the United States and the purpose or purposes thereof, shall have attached thereto an affidavit certifying the signatures to said petition, and shall be filed with the secretary of the board of commissioners. Such petition may consist of one or more parts or papers.

History: **En. Sec. 6, Ch. 24, L. 1931; re-en. Sec. 7264.15, R.C.M. 1935; R.C.M. 1947, 89-2125; amd. Sec. 1, Ch. 463, L. 1983.**

85-7-1957. United States contracts — court approval required. (1) The board of commissioners of any irrigation district, before the making of any contract with the United States hereunder, shall commence a special proceeding in the district court of the state, by which the proceedings of the board and of the district leading up to the making of any such contract and the validity of the terms thereof shall be judicially examined and approved and affirmed or disapproved and disaffirmed.

(2) The practice and procedure for the confirmation of any step or action, as provided in subsection (1) shall be as nearly as possible in conformity with the practice and procedure now provided for the confirmation before the issuance and sale of bonds of an irrigation district. The court may approve and affirm such proceedings in part and disapprove and declare illegal or

invalid other and subsequent parts of the proceedings, and insofar as possible, the court shall remedy and cure all defects in said proceedings.

History: (1)En. Sec. 7, Ch. 24, L. 1931; re-en. Sec. 7264.16, R.C.M. 1935; amd. Sec. 39, Ch. 460, L. 1977; Sec. 89-2126, R.C.M. 1947; (2)En. Sec. 8, Ch. 24, L. 1931; re-en. Sec. 7264.17, R.C.M. 1935; Sec. 89-2127, R.C.M. 1947; R.C.M. 1947, 89-2126, 89-2127.

85-7-1958. Power to contract with United States cumulative. Sections 85-7-1951 through 85-7-1958 shall not limit the power and authority of an irrigation district or the commissioners thereof to contract with the United States under other applicable statutes but shall be cumulative thereto.

History: En. Sec. 9, Ch. 24, L. 1931; re-en. Sec. 7264.18, R.C.M. 1935; R.C.M. 1947, 89-2128.

85-7-1959 and 85-7-1960 reserved.

85-7-1961. Districts organized prior to certain date — authority to continue electrical power operations. (1) An irrigation district or project that was organized prior to March 30, 1981, under Title 85, chapter 7, is authorized to continue all electrical power operations it conducted prior to March 30, 1981.

(2) Electrical power operations authorized by subsection (1) of this section include generation, distribution, and sale of electrical power and the reasonable and necessary means to carry out such operations.

(3) In addition to the authority otherwise provided in this section and Title 85, chapter 7, irrigation districts or projects organized under Title 85, chapter 7, or described in 85-7-110, may construct, install, operate, and maintain facilities to generate, transmit, and sell, as well as any associated facilities necessary to that end, electricity using the water power potential of irrigation projects or works or federally owned water impoundment projects where electric power generation facilities have not heretofore been installed and licensed under the Federal Power Act.

History: En. Sec. 1, Ch. 179, L. 1981; amd. Sec. 1, Ch. 553, L. 1983.

Cross-References

Small power production facilities, Title 69, ch. 3, part 6.

85-7-1962 through 85-7-1970 reserved.

85-7-1971. Contracts with the state of Montana — loans, sinking fund, and investments. (1) The board of commissioners of any irrigation district, whenever considered advisable and in the interest of the district, may enter into any obligation or contract with the state of Montana for the purpose of obtaining a loan of money from various sources, including the coal severance tax bonding program provided for in Title 17, chapter 5, part 7, to be used by the district for:

(a) the liquidation of any bonded or outstanding indebtedness of the district; or

(b) the provision of any construction, improvement, or repair work necessary to place the irrigation system of the district in good operating condition.

(2) The board shall create, by proper levy and collection of assessments, a sinking fund that must be available for the construction of betterments to the irrigation system of the district as may be necessary during the term of any contract made with the state as provided for in subsection (1). The sinking fund must be designated the "... District Sinking Fund for Betterments" and must be created in such an amount and within such time as may be agreed upon between the district and the state of Montana.

(3) The board shall invest any surplus in the sinking fund in legal investments backed, insured, or guaranteed by the United States or the state of Montana, including federal and state agency obligations.

History: En. Sec. 1, Ch. 301, L. 1987.

Cross-References

Public contracts generally, Title 18, ch. 1.

85-7-1972. State contracts — assessments. In any contract entered into between an irrigation district and the state of Montana under 85-7-1971 through 85-7-1975, the board of commissioners shall, in compliance with such contract, levy assessments against the lands benefited by the contract within the district, including such deficiency assessments as will enable the district to meet established or anticipated delinquencies in making payments to the state of Montana because of the failure of landowners to pay the assessments levied against their lands in the district.

History: En. Sec. 2, Ch. 301, L. 1987.

85-7-1973. Amount owed state — lien and special tax. All amounts owed to the state under any contract made under 85-7-1971 through 85-7-1975 between the district and the state of Montana establish a general obligation of the district for payment, and any amounts to be paid to the state of Montana constitute a lien upon the irrigation system of the district. All lands now within the district or added to the district are subject to a special tax or assessment under 85-7-2104 for the payment of all amounts owed to the state under the contract between the district and the state of Montana. The special tax or assessment constitutes a first and prior lien on the land against which it is levied to the same extent and with the same force and effect as taxes levied for state and county purposes.

History: En. Sec. 3, Ch. 301, L. 1987; amd. Sec. 155, Ch. 584, L. 1999; amd. Sec. 10, Ch. 93, L. 2007.

Cross-References

State tax liens, Title 15, ch. 16, part 4.

85-7-1974. Majority vote or petition necessary to contract with the state. (1) No contract may be made between an irrigation district and the state of Montana under 85-7-1971 through 85-7-1975 except on:

(a) approval by a majority vote of those voting on the question at an election conducted in accordance with Title 13, chapter 1, part 5, and 85-7-1710; or

(b) receipt of a petition signed by at least 60% in number and acreage of the holders of title or evidence of title to lands within the district. The petition must be addressed to the board of commissioners and must set forth the aggregate amount of money to be borrowed from various sources, including the coal severance tax bonding program provided for in Title 17, chapter 5, part 7, and the purpose for which the money will be used. The petition must include an affidavit certifying the signatures to the petition and must be filed with the secretary of the board of commissioners.

(2) In an election held for approval of a district contract under this section, the voting majority must own at least 50% of the acreage included in the district.

History: En. Sec. 4, Ch. 301, L. 1987; amd. Sec. 249, Ch. 49, L. 2015.

85-7-1975. State contracts — court approval required. (1) The board of commissioners of an irrigation district, before the making of a contract with the state of Montana under 85-7-1971 through 85-7-1975, shall commence a special proceeding in the district court. In such proceeding, the proceedings of the board and of the district leading up to the making of the contract and the validity of the terms thereof must be judicially examined and approved or disapproved.

(2) The practice and procedure for the confirmation of any step or action provided for in subsection (1) must be as nearly as possible in conformity with the practice and procedure established for the confirmation before the issuance and sale of bonds of an irrigation district. The district court may approve such proceedings in part and declare illegal or invalid other parts of the proceedings. However, insofar as possible, the court shall remedy and cure all defects in the proceedings.

History: En. Sec. 5, Ch. 301, L. 1987.

Part 20
Indebtedness, Bonds, and Bankruptcy

Part Cross-References

Payment of funds — liability of officers, 20-9-444, 20-9-445.

85-7-2001. Limitations on debt-incurring power. (1) The board of commissioners or other officers of the district may not incur any debt or liability, either by issuing bonds or otherwise, except as provided in this chapter.

(2) An irrigation district may not become indebted, in any manner or for any purpose in any one year, in an amount exceeding 18.75% of the assessed valuation of the district, except as provided in subsection (4).

(3) An irrigation district may not incur indebtedness, in any manner or for any purpose in any one year, on behalf of any subdistrict in the district in an amount exceeding 18.75% of the assessed valuation of the subdistrict, except as provided in subsection (4).

(4) (a) For the purpose of organization; for any of the immediate purposes of this chapter; to make or purchase surveys, plans, and specifications; for stream gauging and gathering data; or to make any repairs occasioned by any calamity or other unforeseen contingency, the board of commissioners may, in any one year, incur the indebtedness of as many dollars as there are acres in the district and may issue warrants of the district.

(b) For the purpose of organization, for any of the immediate purposes of this chapter, or to meet the expenses occasioned by any calamity or other unforeseen contingency, the board of commissioners may, in any one year, incur (in addition to the 18.75% limitations of subsections (2) and (3)) an additional indebtedness not exceeding 12.5% of the assessed valuation of the district and may issue warrants of the district therefor.

(c) The limitations of subsections (1) through (3) do not apply to warrants issued for unpaid interest on the valid bonds of any irrigation district.

(d) The limitations of subsections (1) through (3) do not apply to bonds or obligations issued to the state of Montana, the United States, or any department, agency, or instrumentality of these governments if the bonds or obligations are issued:

(i) pursuant to a loan program specifically authorized by the legislature; or

(ii) to finance in whole or in part a project authorized by the legislature.

(e) The limitations of subsections (1) through (3) do not apply to any bonds issued under this chapter pursuant to a provision that expressly supersedes the limitation.

(5) Any debt or liability incurred in excess of the limitations provided by the irrigation district laws is void.

History: **En. Sec. 38, Ch. 146, L. 1909; amd. Sec. 1, Ch. 110, L. 1913; amd. Sec. 1, Ch. 127, L. 1913; re-en. Sec. 7208, R.C.M. 1921; re-en. Sec. 7208, R.C.M. 1935; amd. Sec. 32, Ch. 234, L. 1971; amd. Sec. 25, Ch. 460, L. 1977; R.C.M. 1947, 89-1701; amd. Sec. 63, Ch. 614, L. 1981; amd. Sec. 23, Ch. 193, L. 1987; amd. Sec. 14, Ch. 439, L. 1989.**

Cross-References

Sections 85-7-2001, 85-7-2011 through 85-7-2027, 85-7-2031, and 85-7-2032 not applicable to irrigation districts formed under Title 85, ch. 7, part 3, 85-7-304.

Failure to levy or collect tax assessment, 85-7-2137.

85-7-2002 through 85-7-2010 reserved.

85-7-2011. Exemption of irrigation district property. The bonds issued under the provisions of this part, rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and all other personal property belonging to any irrigation district organized under the laws of Montana and not operating for profit may not be taxed for state, county, or municipal purposes and may not be assessed costs for any improvement or maintenance district created under Title 7, chapter 12.

History: **En. Sec. 39, Ch. 146, L. 1909; re-en. Sec. 7209, R.C.M. 1921; re-en. Sec. 7209, R.C.M. 1935; amd. Sec. 2, Ch. 492, L. 1977; R.C.M. 1947, 89-1702; amd. Sec. 2, Ch. 276, L. 1987.**

Cross-References

Property tax exemptions, Art. VIII, sec. 5, Mont. Const.

85-7-2012. Purposes for which bonds may be issued. The board of commissioners of a district established under the provisions of Title 85, chapter 7, part 1, may authorize and issue negotiable fully registered bonds or negotiable coupon bonds of the district for the purpose of providing the necessary funds for:

(1) constructing the necessary irrigation canals and works, including drainage works, and constructing works for the generation and distribution of electricity within the district and for acquiring the property and rights necessary therefor;

(2) acquiring, by purchase or otherwise, waters, water rights, canals, reservoirs, reservoir sites, irrigation works, drainage works, and works for the generation and distribution of electricity, whether the works are constructed or partially constructed;

(3) meeting the expenses incurred incident to the construction or acquisition of the works and property, including administrative, engineering, and legal expenses;

(4) assuming, as principal or guarantor, indebtedness to the United States on account of district lands;

(5) providing a sufficient amount of money to pay the interest on all bonds of the district for a period not exceeding 5 years;

(6) redeeming or paying all or any portion of the existing indebtedness of the district, evidenced by outstanding bonds; delinquent interest coupons, overdue claims for interest, and accrued interest; or warrants, together with all delinquent and accrued interest, whether the indebtedness has or may become payable at the option of the district, by consent of the bondholders, or by any other lawful means;

(7) establishing a reserve for the payment of principal and interest on bonds of the district in an amount determined by the board to be reasonably required to market the bonds; or

(8) otherwise carrying out the provisions of the irrigation district laws.

History: En. Sec. 40, Ch. 146, L. 1909; amd. Sec. 11, Ch. 145, L. 1915; amd. Sec. 7, Ch. 153, L. 1917; amd. Sec. 5, Ch. 116, L. 1919; re-en. Sec. 7210, R.C.M. 1921; amd. Sec. 7, Ch. 157, L. 1923; amd. Sec. 1, Ch. 185, L. 1929; re-en. Sec. 7210, R.C.M. 1935; amd. Sec. 26, Ch. 460, L. 1977; R.C.M. 1947, 89-1703(1); amd. Sec. 15, Ch. 439, L. 1989.

Cross-References

Amending or supplementing United States contracts — effect on indebtedness — petition not necessary, 85-7-2031, 85-7-2032.

Apportionment of costs when bonds issued, 85-7-2114.

85-7-2013. Majority vote, petition, and protest requirements. (1) Bonds provided for in 85-7-2012 through 85-7-2015 may not be authorized or issued by or on behalf of any irrigation district organized under this chapter or by an irrigation district on behalf of a subdistrict located in the district and a contract may not be made with the United States as provided in 85-7-1906 except on:

(a) approval by a majority vote of those voting on the question at an election conducted in accordance with Title 13, chapter 1, part 5, with votes cast and counted as prescribed in 85-7-1710;

(b) receipt of a petition signed by a majority in acreage of the holders of title or evidence of title to lands included within the district or, if the bonds are issued on behalf of or if the contract relates to a subdistrict, a majority in acreage of the holders of title or evidence of title to lands within the subdistrict;

(c) receipt of a petition signed by at least 75%, in number and acreage, of the holders of title or evidence of title to the lands who are residents of the county or counties in which lands of the district are situated or, if the bonds are issued on behalf of or if the contract relates to a subdistrict, at least 75% in number and acreage of the holders of title or evidence of title to the lands who are residents of the county or counties in which lands of the subdistrict are situated; or

(d) adoption of a resolution by the board of commissioners approving special taxes or assessments to repay bonds pursuant to 85-7-2048 following a determination that a protest as provided in 85-7-2045 by owners of assessed irrigable acres as determined by 85-7-2043 comprises no more than 50% of the special tax or assessment proposed to pay the costs of the suggested improvements.

(2) The petition must be addressed to the board of commissioners, set forth the aggregate amount of bonds to be issued and the purpose or purposes of the bonds, have attached to it an affidavit verifying the signatures to the petition, and be filed with the secretary of the board. When bonds are issued for the sole purpose of redeeming or paying the existing and outstanding bonds or warrants, or both, including delinquent and accrued interest, of the district, the bonds may be authorized and issued in the manner provided for by 85-7-2019.

(3) In an election held for approval to allow a district or subdistrict to issue bonds or enter into a contract under this section, the voting majority must own at least 50% of the acreage included in the district or subdistrict.

History: En. Sec. 40, Ch. 146, L. 1909; amd. Sec. 11, Ch. 145, L. 1915; amd. Sec. 7, Ch. 153, L. 1917; amd. Sec. 5, Ch. 116, L. 1919; re-en. Sec. 7210, R.C.M. 1921; amd. Sec. 7, Ch. 157, L. 1923; amd. Sec. 1, Ch. 185, L. 1929; re-en. Sec. 7210, R.C.M. 1935; amd. Sec. 26, Ch. 460, L. 1977; R.C.M. 1947, 89-1703(2); amd. Sec. 16, Ch. 439, L. 1989; amd. Sec. 1, Ch. 164, L. 2011; amd. Sec. 250, Ch. 49, L. 2015; amd. Sec. 10, Ch. 495, L. 2021.

85-7-2014. Procedure after election, petition, or resolution filed. Upon an election, the filing of the petition pursuant to 85-7-2013, or the adoption of a resolution approving the levy of a special tax or assessment under 85-7-2048, the board of commissioners shall, by appropriate order or resolution:

(1) authorize and direct the issuance of the bonds of the district to the amount and for the purpose or purposes specified in the election, petition, or resolution adopted pursuant to 85-7-2048;

(2) fix the numbers, denominations, and maturity or maturities of the bonds;

(3) specify the rate of interest on the bonds and whether it is payable annually or semiannually;

(4) designate the place and method of payment of the bonds and the interest on the bonds, within or outside the state of Montana;

(5) prescribe the form of the bonds; and

(6) provide for the levy of a special tax or assessment as provided in this chapter on all the lands in the district or for a levy on a subdistrict if the bonds are issued on behalf of the subdistrict, for the irrigation and benefit of which the district or subdistrict was organized and the bonds are issued or the contract is to be made, sufficient in an amount to pay the interest on and principal of the bonds when due and all amounts to be paid to the United States under any contract between the district and the United States for which bonds of the district have not been deposited with the United States as provided in 85-7-1906.

History: En. Sec. 40, Ch. 146, L. 1909; amd. Sec. 11, Ch. 145, L. 1915; amd. Sec. 7, Ch. 153, L. 1917; amd. Sec. 5, Ch. 116, L. 1919; re-en. Sec. 7210, R.C.M. 1921; amd. Sec. 7, Ch. 157, L. 1923; amd. Sec. 1, Ch. 185, L. 1929; re-en. Sec. 7210, R.C.M. 1935; amd. Sec. 26, Ch. 460, L. 1977; R.C.M. 1947, 89-1703(3); amd. Sec. 17, Ch. 439, L. 1989; amd. Sec. 2, Ch. 164, L. 2011; amd. Sec. 11, Ch. 495, L. 2021.

Cross-References

Tax or assessment to pay bonds and interest, 85-7-2101.

85-7-2015. Effect of contracting with United States. If contract is to be made with the United States as provided in 85-7-1906 and bonds are not to be deposited with the United States in connection with the contract, the board of commissioners need not authorize the issuance of bonds, or if bonds are required in addition to the contract, the commissioners may authorize bonds only for the amount needed in addition to the contract.

History: En. Sec. 40, Ch. 146, L. 1909; amd. Sec. 11, Ch. 145, L. 1915; amd. Sec. 7, Ch. 153, L. 1917; amd. Sec. 5, Ch. 116, L. 1919; re-en. Sec. 7210, R.C.M. 1921; amd. Sec. 7, Ch. 157, L. 1923; amd. Sec. 1, Ch. 185, L. 1929; re-en. Sec. 7210, R.C.M. 1935; amd. Sec. 26, Ch. 460, L. 1977; R.C.M. 1947, 89-1703(4); amd. Sec. 12, Ch. 495, L. 2021.

Cross-References

Amending or supplementing United States contracts, 85-7-2031, 85-7-2032.

Apportionment of costs when bonds issued, 85-7-2114.

85-7-2016. Repealed. Sec. 17, Ch. 495, L. 2021.

History: En. Sec. 41, Ch. 146, L. 1909; re-en. Sec. 7211, R.C.M. 1921; amd. Sec. 1, Ch. 161, L. 1923; amd. Sec. 2, Ch. 185, L. 1929; re-en. Sec. 7211, R.C.M. 1935; amd. Sec. 27, Ch. 460, L. 1977; R.C.M. 1947, 89-1704(1), (2); amd. Sec. 3, Ch. 164, L. 2011.

85-7-2017. Repealed. Sec. 17, Ch. 495, L. 2021.

History: En. Sec. 41, Ch. 146, L. 1909; re-en. Sec. 7211, R.C.M. 1921; amd. Sec. 1, Ch. 161, L. 1923; amd. Sec. 2, Ch. 185, L. 1929; re-en. Sec. 7211, R.C.M. 1935; amd. Sec. 27, Ch. 460, L. 1977; R.C.M. 1947, 89-1704(3) thru (6); amd. Sec. 2794, Ch. 56, L. 2009.

85-7-2018. Repealed. Sec. 17, Ch. 495, L. 2021.

History: En. Sec. 41, Ch. 146, L. 1909; re-en. Sec. 7211, R.C.M. 1921; amd. Sec. 1, Ch. 161, L. 1923; amd. Sec. 2, Ch. 185, L. 1929; re-en. Sec. 7211, R.C.M. 1935; amd. Sec. 27, Ch. 460, L. 1977; R.C.M. 1947, 89-1704(7), (8).

85-7-2019. Refunding bonds. (1) Any irrigation district may issue refunding bonds.

(2) An irrigation district may issue refunding bonds for the purpose of redeeming or paying the indebtedness or any portion of the indebtedness of the district, whether represented by existing and outstanding bonds, interest coupons, or warrants, including accrued and unpaid interest on the bonds, coupons, and warrants, and whether the indebtedness is due or not due or has or may become payable at the option of the district, by consent of the bondholders or warrant holders, or by any other legal means and whether the indebtedness is now existing or may be created. The refunding bonds may be issued in one or more series. If the average annual interest rate of the refunding bonds is more than the average annual interest rate on the bonds being refunded or the term of the bonds being refunded is extended by the refunding bonds, a petition must be filed with the board of commissioners before proceeding with the

refunding. The petition for the refunding bonds must be signed as required by law by a majority in acreage of the holders of title or evidence of title to the lands included within the district, or by a majority in acreage of the holders of title or evidence of title to the lands within a subdistrict if the bonds to be refunded were issued by the district on behalf of the subdistrict, and addressed to the board of directors or commissioners of the district. The petition may contain the following specifications, in addition to the matters otherwise required by law:

(a) how many series of bonds shall be issued; and

(b) the terms, conditions, and liens of the bonds and the terms and conditions upon which each of the series of bonds shall be exchanged for outstanding bonds of the district if the bonds are to be exchanged and not sold.

(3) The specifications provided for in subsection (2), when set forth in the petition, are controlling upon the board of directors or commissioners. The petitioners shall in the specifications set forth the contract of exchange to be made, with particularity. The contract may include any term, requirement, grant, transfer of property or rights, covenant, or condition considered by the petitioners to be in the best interest of the district or of the subdistrict if the bonds that are the subject of the contract were issued by the district on behalf of the subdistrict. The petition shall state that the board of directors or commissioners of the district may authorize and direct the issuance of bonds according to the specifications of the petition, make any such contract, and bind the irrigation district under the contract.

History: (1)En. Sec. 1, Ch. 155, L. 1929; re-en. Sec. 7226.1, R.C.M. 1935; amd. Sec. 19, Ch. 315, L. 1974; Sec. 89-1712, R.C.M. 1947; (2), (3)En. Sec. 2, Ch. 155, L. 1929; re-en. Sec. 7226.2, R.C.M. 1935; amd. Sec. 29, Ch. 460, L. 1977; Sec. 89-1713, R.C.M. 1947; R.C.M. 1947, 89-1712, 89-1713; amd. Sec. 18, Ch. 439, L. 1989; amd. Sec. 13, Ch. 495, L. 2021.

85-7-2020. Details relating to bonds. (1) All bonds issued under the provisions of this part shall run for a period not longer than 40 years from their date but may contain a clause providing for their prior redemption and payment, at the option of the board of commissioners of the district, on any interest payment date after 5 years from their date. Instead of straight maturity bonds, bonds may be issued to mature serially at such times and in such amounts as the board of commissioners shall determine, but no bonds so issued may run for a longer period than 40 years from the date of issue. The bonds shall bear interest from their date until paid, payable annually or semiannually with the installments of interest to date of maturity of principal to be evidenced by appropriate coupons attached to each bond. The bonds and interest coupons shall be payable at such place or places within or without the state of Montana as the board of commissioners shall prescribe.

(2) The bonds shall be of such denomination or denominations and in such form as the board of commissioners shall prescribe. An issue of bonds is defined to be all the bonds issued in accordance with a resolution or order of the board of commissioners. Each issue of the bonds of a district shall be numbered consecutively as authorized, and the bonds of each issue shall be numbered consecutively. The board of commissioners shall fix the date of the bonds, or they may divide any issue into two or more divisions and fix different dates for the bonds of each division. The date of any bond must be subsequent to the order or resolution authorizing it and prior to its delivery to a purchaser from the district.

(3) All bonds issued hereunder shall be signed by the president and attested by the secretary of the board under the corporate seal of the district, and each of the interest coupons to be attached to the bonds shall be executed by the signatures of the president and secretary. Each bond shall be signed and each interest coupon shall be executed by the president and secretary of the board of commissioners who may be in office at the date of the bond and coupons or at any time thereafter prior to the delivery of the bond to the purchaser from the district.

(4) The board of commissioners may provide for the registration of bonds in their discretion. The secretary of the board of commissioners and county treasurer shall each keep a record of the bonds sold or otherwise disposed of; their date, number, amount, maturity, or maturities; to whom sold; rate of interest; and the place or places of payment.

History: En. Sec. 42, Ch. 146, L. 1909; amd. Sec. 1, Ch. 17, Ex. L. 1919; re-en. Sec. 7212, R.C.M. 1921; amd. Sec. 8, Ch. 157, L. 1923; re-en. Sec. 7212, R.C.M. 1935; amd. Sec. 12, Ch. 260, L. 1959; amd. Sec. 33, Ch. 234, L. 1971; amd. Sec. 28, Ch. 460, L. 1977; R.C.M. 1947, 89-1705.

85-7-2021. Liens of bonds. (1) All bonds issued under this chapter and all amounts to be paid to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 85-7-1906, shall be a lien upon all the lands originally or at any time included in the district, or upon lands in a subdistrict if the bonds are issued on behalf of the subdistrict, for the irrigation and benefit of which the irrigation district or subdistrict was organized and the bonds were issued and for the benefit of which such contract between the district and the United States was made, except upon any lands as may at any time be included in the district or subdistrict on account of the exchange or substitution of water under the provisions of 85-7-1912; and all such lands are subject to a special tax or assessment for the payment of the interest on and principal of the bonds. All amounts to be paid to the United States under any contract between the district and the United States and the special tax or assessment constitute a first and prior lien on the land against which levied to the same extent and with like force and effect as taxes levied for state and county purposes.

(2) All liens created under this section remain upon the lands until the obligations of the district for the bonds are discharged, as provided by law or by the resolution of the board of commissioners authorizing their issuance.

History: En. Sec. 43, Ch. 146, L. 1909; amd. Sec. 12, Ch. 145, L. 1915; amd. Sec. 8, Ch. 153, L. 1917; amd. Sec. 8, Ch. 116, L. 1919; re-en. Sec. 7213, R.C.M. 1921; re-en. Sec. 7213, R.C.M. 1935; amd. Sec. 1, Ch. 190, L. 1973; R.C.M. 1947, 89-1706; amd. Sec. 19, Ch. 439, L. 1989.

Cross-References

Added lands to pay proportional share of bonded indebtedness, 85-7-2102.

85-7-2022. Sale of bonds. Bonds issued under the provisions of this part must be issued, negotiated, and sold by or under the direction of the board of commissioners but may not be sold for less than 97% of par value and accrued interest to the date of delivery. The board may sell the bonds from time to time in quantities necessary and most advantageous to raise money for the purposes for which the bonds were issued.

History: En. Sec. 44, Ch. 146, L. 1909; amd. Sec. 13, Ch. 145, L. 1915; re-en. Sec. 7214, R.C.M. 1921; amd. Sec. 9, Ch. 157, L. 1923; re-en. Sec. 7214, R.C.M. 1935; R.C.M. 1947, 89-1707(1); amd. Sec. 27, Ch. 253, L. 2011.

85-7-2023. Notice of sale of bonds. Except as provided in 85-7-2033 regarding a private sale, before making any sale, the board shall, by resolution at a meeting, declare its intention to sell a specified amount of the bonds and the day, hour, and place of the sale. The board shall enter the resolution into the minutes and provide notice of the sale by publication at least once a week for 3 successive calendar weeks in a newspaper in the county where the office of the board of commissioners is located, and the notice may be published in any other newspaper at the board's discretion. The notice must state that sealed proposals will be received by the board at its office for the purchase of bonds until the day and hour named in the resolution. At the time appointed, the board shall open the proposals and award the purchase of the bonds or any portion or portions of the bonds to the highest responsible bidder or bidders. The board may reject any or all bids. If an award is not made, the board may either readvertise the bonds or any part of the bonds for sale or sell the bonds or any part of the bonds at private sale. Coupons evidencing unearned interest must be detached and canceled.

History: En. Sec. 44, Ch. 146, L. 1909; amd. Sec. 13, Ch. 145, L. 1915; re-en. Sec. 7214, R.C.M. 1921; amd. Sec. 9, Ch. 157, L. 1923; re-en. Sec. 7214, R.C.M. 1935; R.C.M. 1947, 89-1707(2); amd. Sec. 20, Ch. 439, L. 1989; amd. Sec. 28, Ch. 253, L. 2011.

85-7-2024. Issuance of bonds for direct contract payments. Any bonds issued hereunder may, in the discretion of the board of commissioners, be issued direct in payment and satisfaction of the contract or purchase price of any irrigation works, canals, water, water rights, or other property constructed or acquired by or for the district or may be deposited with the United States as provided in 85-7-1906.

History: En. Sec. 44, Ch. 146, L. 1909; amd. Sec. 13, Ch. 145, L. 1915; re-en. Sec. 7214, R.C.M. 1921; amd. Sec. 9, Ch. 157, L. 1923; re-en. Sec. 7214, R.C.M. 1935; R.C.M. 1947, 89-1707(3).

85-7-2025. Cancellation of unused bonds. Any bonds which may have been authorized but which have not been sold or deposited as security for funds advanced or to be advanced and against which the state, United States, or any other person, firm, or corporation shall have no claim to or equity in may be canceled by the board of commissioners by appropriate resolution or order. After the cancellation of said bonds, the same shall not be sold or otherwise disposed of and shall be invalid and of no effect, and the board shall have no authority to replace such canceled bonds without an authorization from the members of the district similar to that which provided for their issuance.

History: En. Sec. 44, Ch. 146, L. 1909; amd. Sec. 13, Ch. 145, L. 1915; re-en. Sec. 7214, R.C.M. 1921; amd. Sec. 9, Ch. 157, L. 1923; re-en. Sec. 7214, R.C.M. 1935; R.C.M. 1947, 89-1707(4).

Cross-References

Cancellation of tax levy under certain conditions, 85-7-2105.

85-7-2026. Delivery of bonds. If bonds are sold for cash, they shall be delivered by the board of commissioners to the county treasurer of the county in which the office of the district is located. The county treasurer, after making a complete record of them, shall deliver them to the purchaser upon receipt of the purchase price. Delivery of the bonds may be made by the county treasurer to the purchaser at any place or places inside or outside this state, and the county treasurer may receive the proceeds of the sale of the bonds at the place or places of delivery.

History: En. Sec. 45, Ch. 146, L. 1909; re-en. Sec. 7215, R.C.M. 1921; amd. Sec. 10, Ch. 157, L. 1923; re-en. Sec. 7215, R.C.M. 1935; amd. Sec. 1, Ch. 258, L. 1967; amd. Sec. 145, Ch. 431, L. 1975; R.C.M. 1947, 89-1708(part).

85-7-2027. Disposition of bond proceeds. The county treasurer shall place the proceeds of the sale to the credit of the district, and the proceeds may be paid out by the county treasurer only upon the written order of the board of commissioners, signed by the president and secretary under the seal of the district. The proceeds may be spent only for the purpose for which the bonds were issued. If any portion of the funds realized from the sale of bonds is not needed immediately for the purpose for which the bonds were issued, the board of commissioners may direct the investment of the funds and any other surplus funds of the district or any portion of the funds in legal investments backed, insured, or guaranteed by the United States or the state of Montana, including federal and state agency obligations. The county treasurer shall transfer to the credit of the district and place to the credit of the fund or funds, as the board of commissioners may direct, all interest received upon investments of the district entrusted to the treasurer's care.

History: En. Sec. 45, Ch. 146, L. 1909; re-en. Sec. 7215, R.C.M. 1921; amd. Sec. 10, Ch. 157, L. 1923; re-en. Sec. 7215, R.C.M. 1935; amd. Sec. 1, Ch. 258, L. 1967; amd. Sec. 145, Ch. 431, L. 1975; R.C.M. 1947, 89-1708(part); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 2, Ch. 166, L. 1987; amd. Sec. 2795, Ch. 56, L. 2009.

85-7-2028 through 85-7-2030 reserved.

85-7-2031. Amending or supplementing United States contracts — effect on indebtedness. The board of commissioners of any irrigation district established and organized under and by virtue of the laws of Montana, whenever deemed advisable and to the interests of the district, shall have the power and authority to enter into any contract with the United States supplementing or amending any original contract with the United States, said original contract having been entered into pursuant to the provisions of 85-7-1906 and 85-7-2012 through 85-7-2015; provided, that such supplementary or amendatory contract does not increase the amount of the principal indebtedness of the district to the United States as it exists at the date of the supplementary or amendatory contract authorized under the provisions of 85-7-2012 through 85-7-2015.

History: En. Sec. 1, Ch. 71, L. 1933; re-en. Sec. 7215.1, R.C.M. 1935; R.C.M. 1947, 89-1709; amd. Sec. 14, Ch. 495, L. 2021.

85-7-2032. Amending or supplementing United States contracts — petition, election, or resolution not necessary. If a supplementary or amendatory contract is made with the United States under this part, an election, petition, or resolution required under 85-7-2012 through 85-7-2015 is not necessary. It is sufficient in the case of a contract made with the United States under this part for the board of commissioners of any irrigation district to authorize the execution of the contract by its president and secretary by appropriate resolution adopted at any regular or special meeting of the board of commissioners.

History: En. Sec. 2, Ch. 71, L. 1933; re-en. Sec. 7215.2, R.C.M. 1935; R.C.M. 1947, 89-1710; amd. Sec. 4, Ch. 164, L. 2011; amd. Sec. 15, Ch. 495, L. 2021.

85-7-2033. Private sale of bonds. The district may sell bonds issued under this part at private sale by negotiation and without public advertisement or solicitation of bids pursuant to 17-5-107.

History: En. Sec. 7, Ch. 439, L. 1989; amd. Sec. 29, Ch. 253, L. 2011.

85-7-2034 through 85-7-2040 reserved.

85-7-2041. Bankruptcy proceedings by irrigation districts. (1) The board of commissioners or directors of any irrigation district may, in the name and on behalf of such district, initiate and carry out proceedings for readjustment of the debts of such district, under Chapter IX of the federal Bankruptcy Act or similar provisions of any past or future federal bankruptcy act.

(2) This section is remedial in its nature and shall be liberally construed to effect its purpose, which is to permit irrigation districts to readjust their debts under federal bankruptcy acts and to confer upon the board of commissioners or directors thereof every power necessary therefor or reasonably incidental thereto.

History: En. Secs. 1, 2, Ch. 110, L. 1939; R.C.M. 1947, 89-1903(part), 89-1904.

Cross-References

Exempt property — bankruptcy proceeding, 31-2-106.

85-7-2042. Levy of special taxes or assessments by resolution. (1) In lieu of authorizing bonds by petition or election, the board of commissioners may undertake proceedings pursuant to this part that may result in a resolution pursuant to 85-7-2048 authorizing a levy of special taxes or assessments to repay and secure the repayment of bonds issued to pay the costs of improvements described in 85-7-2012. The costs of improvements may include the costs of bond issuance and a debt service reserve securing the repayment of bonds.

(2) A board of commissioners, if authorized by this part, shall levy and assess on all irrigable acres in the district or subdistrict benefited by the improvements an equal dollar amount for each irrigable acre to repay the bonds.

History: En. Sec. 1, Ch. 495, L. 2021.

85-7-2043. Resolution of intent to levy special taxes or assessments — determination of irrigable acres. (1) If the board of commissioners determines to undertake special tax or assessment proceedings to authorize the issuance of bonds, the board shall first determine the total number of irrigable acres in the district or subdistrict pursuant to 85-7-2107 and apportionment of the costs subject to 85-7-2114.

(2) If the condition in subsection (1) is met, the board of commissioners shall pass a resolution of intention to levy special taxes or assessments.

(3) The resolution of intention must:

(a) describe the number of irrigable acres in the district or subdistrict and the number of irrigable acres that would be subject to the special taxes or assessments and, if a subdistrict, include a map and description of the boundaries of the subdistrict;

(b) state the general character of the improvements that are desired to be made;

(c) designate the name of the engineer, if any, who is in charge of the work and the estimated costs of the improvements and of the estimated maximum principal amount of the bonds;

(d) specify that the costs of the improvements will be assessed against irrigable acres in the district or subdistrict benefited by the improvements on the basis of equal amount for each irrigable acre; and

(e) provide an estimate of the dollar amount proposed to be assessed against each irrigable acre based on the estimated maximum principal amount of the bonds.

(4) The board of commissioners may include in one proceeding under one resolution of intention the different kinds of improvement or work provided for in this part.

(5) In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements, it is sufficient for the board to briefly describe the work or the assessments, or both, and to refer to the resolution of intention for further information.

History: En. Sec. 2, Ch. 495, L. 2021.

85-7-2044. Notice of resolution of intention for levy of special taxes or assessments — hearing — exception. (1) On passage of a resolution of intention to levy special taxes or assessments pursuant to 85-7-2043, the board of commissioners shall publish a notice of that action as provided in 7-1-2121.

(2) A copy of the notice must be mailed, as provided in 7-1-2122, to each person, firm, or corporation or the agent of the person, firm, or corporation owning real property within the district or subdistrict listed in the owner's name on the last-completed assessment roll for state, county, and school district taxes.

(3) (a) The notice must:

(i) describe the general character of the improvements proposed to be made or acquired by purchase;

(ii) state the estimated cost of the improvements and the estimated maximum principal amount of the bonds;

(iii) describe that the debt service on the bonds will be repaid by a tax or assessment levied on the basis of equal amount for each irrigable acre;

(iv) state the dollar amount to be levied against each irrigable acre based on the estimated maximum principal amount of the bonds;

(v) state that the deadline for the receipt of protests against the proposed issuance of the bonds or levy of special taxes or assessment, or both, is 5 p.m. on the date of the end of the protest period pursuant to 85-7-2045; and

(vi) designate the time when and the place where the board will hear and act on all protests that may be made against the proposed issuance of the bonds or levy of the special taxes or assessments, or both.

(b) The notice must refer to the resolution on file in the office of the commission secretary for the description of the particulars. If the proposal is for the purchase of an existing improvement, the notice must state the expected cost of the proposed improvement.

(4) If no officer of the county is specifically assigned to publish or post a resolution, order, notice, or determination subject to this section, the commission secretary shall post or procure the publication or posting.

(5) An error or mistake by the person posting or procuring the publication or posting of a resolution, notice, order, or determination does not invalidate or affect the notice and protest proceedings if the error or mistake is corrected in a timely manner.

History: **En. Sec. 3, Ch. 495, L. 2021.**

85-7-2045. Right to protest levy of special taxes or assessments. (1) Except as provided in subsection (2), within 30 days after the first publication date of a notice of a resolution of intention, a property owner liable to be assessed for the costs of improvements proposed in the resolution of intention pursuant to 85-7-2043 may make a written protest against the proposed issuance of the bonds or proposed levy of special taxes or assessments, or both. The protest must be in writing, identify the property owned by the protestor, and be signed by all owners of the property. The protest must be delivered to the commission secretary, who shall endorse the date of the receipt of the protest document.

(2) If the 30-day period described in subsection (1) concludes on a holiday pursuant to 1-1-216 or a Saturday or a Sunday, the period of protest is extended to the day immediately following the holiday, Saturday, or Sunday.

(3) For the purposes of this section, "owner" means, as of the date a protest is filed, the record owner of fee simple title to the irrigable acres to be assessed. The term does not include a tenant or other holder of a leasehold interest in the irrigable acres.

History: **En. Sec. 4, Ch. 495, L. 2021.**

85-7-2046. Hearing on protest. (1) At the next regular meeting of a board of commissioners after the 30-day protest period described in 85-7-2045, the board shall hear and rule on all protests made. Decisions of the board are final and conclusive. The board may recess this hearing from time to time.

(2) In determining whether or not sufficient protests have been made to prevent further proceedings pursuant to 85-7-2047, irrigable acres owned by the irrigation district or other state or local government bodies must be considered the same as other irrigable acres in the irrigation district or subdistrict.

History: **En. Sec. 5, Ch. 495, L. 2021.**

85-7-2047. Sufficient protest to bar issuance of bonds and to postpone further special tax or assessment proceedings. The board of commissioners may not authorize or hold further special tax or assessment proceedings to seek the authorization of the issuance of bonds for a period of 60 days from the date of the conclusion of the protest period if the board of commissioners finds that the protest is made by the owners of irrigable acres to be assessed for more than 50% of the costs of improvements to be financed with the bonds.

History: En. Sec. 6, Ch. 495, L. 2021.

85-7-2048. Resolution authorizing special taxes or assessments. (1) If the board of commissioners finds that a protest is made by the owners of irrigable acres to be assessed for not more than 50% of the costs of improvements to be financed with the bonds, the board of commissioners following the public hearing described in 85-7-2046 may adopt a resolution approving the levy of a special tax or assessment to repay the bonds in accordance with the resolution of intention that was introduced and passed by the board.

(2) The board may issue bonds to pay or reimburse the costs of the improvements when:

(a) sufficient protests have not been delivered to the secretary within the protest period pursuant to 85-7-2045;

(b) protests have been found by the board to be insufficient or have been overruled;

(c) conditions for proceeding with the improvements have been or will be satisfied to the satisfaction of the board of commissioners; and

(d) the requirements of 85-7-2014 and 85-7-2015 are satisfied.

History: En. Sec. 7, Ch. 495, L. 2021.

85-7-2049. Adjournment of hearings on resolutions for special taxes or assessments. If a board of commissioners hearing on proceedings on a special tax or assessment for the repayment of bonds is not held at the scheduled place and time, is adjourned, or is rescheduled, the board has not lost its power or jurisdiction to levy special taxes or assessments to repay the bonds. The board may fix a time and a place for a new or additional hearing. The board shall provide notice of the hearing by publication in a daily, semiweekly, or weekly newspaper at least 5 days before the date of the new hearing.

History: En. Sec. 8, Ch. 495, L. 2021.

85-7-2050. Collection of special taxes or assessments by county treasurer — delinquencies. (1) When a resolution approving special taxes or assessments for the repayment of bonds has been certified by the board secretary and delivered to the county clerk and recorder and the irrigation district has issued or will issue the bonds pursuant to 85-7-2014 and 85-7-2015, the county treasurer in the county in which the lot, tract, or parcel is located shall collect the special taxes or assessments in the same manner and at the same time as taxes for general state, county, and municipal purposes are collected.

(2) A board may declare an unpaid installment of special taxes or assessments as delinquent on the adoption of an appropriate resolution. The special taxes or assessments constitute a first and prior lien on the land against which it is levied as taxes levied for state, county, and municipal purposes. The lien may be extinguished only by the payment of the special taxes or assessments, with all penalties, costs, and interest, as provided in 85-7-2021 and Title 85, chapter 7, part 20.

(3) The lien of special taxes or assessments to repay the bonds must remain on the land for a period of 8 years after the date of the final maturity of the bonds. On the delinquency of one or all installments, the whole property must be sold as other property is sold for taxes. The enforcement of the lien does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent.

History: En. Sec. 9, Ch. 495, L. 2021.

Part 21
Taxes and Assessments

85-7-2101. Tax or assessment to pay bonds and interest. (1) All bonds and the interest thereon issued under this chapter and all payments due or to become due to the United States under any contract between the district and the United States for which the bonds of the district have not been deposited with the United States as provided in 85-7-1906 must be paid by revenue derived from a special tax or assessment levied upon all the lands included in the district, or upon all lands in a subdistrict of the district if the bonds are issued by the district on behalf of the subdistrict, except upon those lands that have been included in the district or subdistrict on account of the exchange or substitution of water under the provisions of 85-7-1912. All lands in the district, or in a subdistrict if the bonds are issued on behalf of the subdistrict, at the time the bonds are issued and all lands subsequently included which are chargeable under the provisions of this chapter remain liable to be taxed and assessed for the payment of the bonds and interest and all payments due or to become due to the United States under any contract between the district and the United States for which bonds of the district have not been deposited with the United States as provided in 85-7-1906.

(2) The board of commissioners of the district, in the order or resolution authorizing and directing the issuance of bonds of the district mentioned in 85-7-2014, shall provide for the annual levy and collection of a special tax or assessment upon all the lands included in the district, or in a subdistrict if the bonds are to be issued on behalf of the subdistrict, and subject to taxation and assessment, sufficient in amount to meet the interest on the bonds promptly when and as the interest accrues and to discharge the principal of the bonds at their maturity or respective maturities and to meet all payments due or to become due to the United States under any contract between the district and the United States for which bonds of the district have not been deposited with the United States as provided in 85-7-1906, at the times the payments by the contract become due and payable.

History: En. Sec. 46, Ch. 146, L. 1909; amd. Sec. 14, Ch. 145, L. 1915; re-en. Sec. 7232, R.C.M. 1921; re-en. Sec. 7232, R.C.M. 1935; amd. Sec. 34, Ch. 234, L. 1971; amd. Sec. 30, Ch. 460, L. 1977; R.C.M. 1947, 89-1801(part); amd. Sec. 21, Ch. 439, L. 1989.

85-7-2102. Added lands to pay proportional share of bonded indebtedness. (1) Where a district or subdistrict is extended after the construction of works of irrigation, including drainage works, to include other irrigable lands, the included lands are chargeable with the proportion of the bonded indebtedness incurred or authorized to be incurred by any district or subdistrict and the proportion of the indebtedness incurred under any contract between the district and the United States for which bonds of the district have not been deposited with the United States as provided in 85-7-1906, as the district court shall order, as provided in 85-7-1808 through 85-7-1811 and 85-7-1841 through 85-7-1845. The board of commissioners of the district shall provide for the levy of a special tax or assessment against the included lands on account of the bonds and the interest on the bonds and on account of any payments under any contracts between the district and the United States for which bonds of the district have not been deposited with the United States as provided in 85-7-1906.

(2) The special tax or assessment shall be levied and collected as and in the manner as the special tax assessment against the lands of the original district or subdistrict on account of the payments under any contract between the district and the United States for which bonds of the district have not been deposited with the United States as provided in 85-7-1906, and on account of which the bonds and the interest on the bonds is provided for, levied, and collected. Upon the extending of any district or subdistrict, the total of the bond indebtedness or indebtedness due to the United States shall be reapportioned, spread, and equalized upon and over the entire area, as provided in 85-7-2021.

History: En. Sec. 47, Ch. 146, L. 1909; amd. Sec. 15, Ch. 145, L. 1915; amd. Sec. 9, Ch. 153, L. 1917; amd. Sec. 7, Ch. 116, L. 1919; re-en. Sec. 7233, R.C.M. 1921; re-en. Sec. 7233, R.C.M. 1935; R.C.M. 1947, 89-1802; amd. Sec. 22, Ch. 439, L. 1989.

85-7-2103. All irrigable lands chargeable alike. (1) (a) All irrigable lands in each irrigation district and all lands in each subdistrict of the district, except those lands that are included within the district because of the exchange or substitution of water under the provisions of 85-7-1912, must pay at the same rate for all purposes for which the lands are charged, except as otherwise provided by law. There may be an administrative charge of $5 to $75 against each separately owned tract of land regardless of its size, as provided in 85-7-2104. The administrative charge is in addition to the annual tax levied under 85-7-2104.

(b) The administrative charge allowed pursuant to subsection (1)(a) may exceed $75, but if the charge exceeds $75, the charge must be determined based on the actual costs for administration of the district or subdistrict and the actual costs of distribution of water.

(2) Whenever water used for the irrigation of any lands within an irrigation district or subdistrict is obtained by pumping to different elevations, the cost of maintenance, operation, and pumping to each separate elevation must be apportioned and levied upon the lands lying under the ditch or ditches running from that particular elevation, in a manner determined fair and equitable by the board of commissioners after considering the facts in each case. This apportionment must be made by the board of commissioners and included each year in the assessment provided for by 85-7-2104. The amount of the assessment for maintenance, operation, and pumping of water to each separate elevation, whenever there are different elevations, must be determined by the board in a manner and upon notice to the persons interested in the district or subdistrict as the board in its rules may provide.

(3) Whenever a contract has been made with the United States, the lands within the district or of a subdistrict if the contract substantially benefits the subdistrict, whether originally included or later annexed to the district or subdistrict, must pay in accordance with the federal reclamation laws and the public notices, orders, and regulations issued under the reclamation laws and in compliance with any contracts made by the United States with the owners of the lands and in compliance with the contract between the districts and the United States.

(4) Whenever a contract has been made with the state of Montana, the lands within the district or of a subdistrict if the contract substantially benefits the subdistrict, whether originally included or later annexed to the district or subdistrict, must pay in accordance with state laws and public notices and rules issued under the laws and in compliance with any contract made by the state with the owners of the lands and in compliance with the contract between the district and the state.

(5) Whenever the works necessary for the completed project are constructed progressively over a period of years and whenever a portion of the lands within the district are or can be irrigated 1 year or more before the completion of the entire project, those lands irrigated or that can be irrigated through the built portion of the project must pay for the cost of operating that portion of the project serving them with irrigation water and must also pay the portion of the interest charges as its irrigable area bears to the irrigable area of the entire project.

(6) Whenever lands have appurtenant to the land a partial water right or partial rights in a system of irrigation other than that of the district or subdistrict, the amounts payable must be equitably apportioned.

(7) Whenever the owners of a portion of the lands within an irrigation district choose to install a gravity system to irrigate those lands, the cost of constructing the gravity system must be apportioned among and levied upon the lands irrigated by the gravity system in a manner determined to be equitable by the board. The levy must be included each year in the assessment charged under 85-7-2104.

History: En. Sec. 48, Ch. 146, L. 1909; amd. Sec. 10, Ch. 153, L. 1917; amd. Sec. 1, Ch. 158, L. 1921; re-en. Sec. 7234, R.C.M. 1921; amd. Sec. 18, Ch. 157, L. 1923; amd. Sec. 1, Ch. 136, L. 1925; re-en. Sec. 7234, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1961; amd. Sec. 31, Ch. 460, L. 1977; R.C.M. 1947, 89-1803; amd. Sec. 1, Ch. 586, L. 1979; amd. Sec. 1, Ch. 330, L. 1983; amd. Sec. 23, Ch. 439, L. 1989; amd. Sec. 1, Ch. 257, L. 1993; amd. Sec. 1, Ch. 392, L. 2001.

85-7-2104. Annual tax levy — apportionment when tracts divided. (1) (a) On or before the first Monday in August each year, the board of commissioners of each irrigation district organized under parts 1 and 15 shall ascertain:

(i) the total amount required to be raised in that year for the general administrative expenses of the district, including the cost of maintenance and repairs; and

(ii) the total amount to be raised that year for interest on and principal of the outstanding bonded or other indebtedness of the district for which bonds of the district have not been deposited with the United States as provided in 85-7-1906.

(b) The board shall levy against each 40-acre tract or fractional lot, as designated by United States government survey, or platted lot if land is subdivided in lots and blocks (or where land is owned in less than 40-acre tracts or in less than the platted lot, against each tract) in the district, that portion of the respective total amounts to be raised that the total irrigable area of any tract or lot bears to the total irrigable area of the lands in the district, so that each acre of irrigable land in the district is assessed and required to pay the same amount as every other acre of irrigable land in the district, unless otherwise specifically provided by the board. The board may also charge the administrative charge authorized in 85-7-2103(1).

(c) Indebtedness under subsection (1) includes debt incurred under any contract between the district and the United States but excludes any indebtedness incurred by the district on behalf of a subdistrict.

(2) (a) On or before the first Monday in August each year, the board of commissioners of each irrigation district organized under parts 1 and 15 for which a subdistrict has been created pursuant to 85-7-404 shall determine the total amount to be raised that year for interest and principal payments on the outstanding bonded or other indebtedness of the district incurred on behalf of the subdistrict.

(b) The board shall levy against each 40-acre tract or fractional lot, as designated by United States government survey, or platted lot if land is subdivided in lots and blocks (or where land is owned in less than 40-acre tracts or in less than the platted lot, against each tract) in the subdistrict, the portion of the total amount to be raised apportioned according to the ratio of the total irrigable area of the tract or lot to the total irrigable area of the lands in the subdistrict, so that each acre of irrigable land in the subdistrict is assessed and required to pay the same amount as every other acre of irrigable land in the subdistrict, unless otherwise specifically provided by the board. The board may also charge the administrative charge authorized in 85-7-2103(1).

(3) If the ownership of any 40-acre tract or other subdivision of land in the district or subdistrict is divided after a special tax or assessment against the land has been levied, each of the owners of a tract or subdivision is entitled to have the special tax or assessment equitably apportioned to and against the divisions of the tract or subdivision, so that each owner is enabled to pay a special tax or assessment against the owner's portion of the tract or subdivision and have the land discharged from the lien. The charge against any separately owned tract of land may not be less than $5.

(4) The board of commissioners of an irrigation district or the board of county commissioners on behalf of a district may not levy property taxes as provided in Title 15, chapter 6, for district administration, operations, debt service, or any other district purpose.

History: En. Sec. 49, Ch. 146, L. 1909; amd. Sec. 16, Ch. 145, L. 1915; amd. Sec. 1, Ch. 148, L. 1921; re-en. Sec. 7235, R.C.M. 1921; amd. Sec. 19, Ch. 157, L. 1923; re-en. Sec. 7235, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1961; amd. Sec. 1, Ch. 51, L. 1973; R.C.M. 1947, 89-1804(1), (2); amd. Sec. 2, Ch. 586, L. 1979; amd. Sec. 2, Ch. 330, L. 1983; amd. Sec. 24, Ch. 439, L. 1989; amd. Sec. 2, Ch. 257, L. 1993; amd. Sec. 156, Ch. 584, L. 1999; amd. Sec. 6, Ch. 34, L. 2003; amd. Sec. 11, Ch. 93, L. 2007.

Cross-References

United States contracts — cancellation of assessment on amended contracts, 85-7-2118.

85-7-2105. Cancellation of tax levy under certain conditions. Whenever the board of commissioners has provided for the payment of any indebtedness of the district by levy of a special tax or assessment and thereafter makes provision for the payment of said indebtedness by the issuance of bonds, said board may cancel any portion or all of said levy theretofore made to raise funds to pay said indebtedness. Whenever said board has provided for the payment of any indebtedness of the district by the authorization of bonds and the levy of a special tax or assessment to pay the principal of and interest on said bonds and thereafter cancels said issue of bonds as provided for in 85-7-2025, said board may cancel any portion or all of said levy theretofore made to raise funds to pay the principal of or interest on said bonds so canceled and refund to the respective persons paying the same the funds, if any, in the custody of the county treasurer collected for the purpose of meeting the principal of and interest on such bonds so canceled.

History: En. Sec. 49, Ch. 146, L. 1909; amd. Sec. 16, Ch. 145, L. 1915; amd. Sec. 1, Ch. 148, L. 1921; re-en. Sec. 7235, R.C.M. 1921; amd. Sec. 19, Ch. 157, L. 1923; re-en. Sec. 7235, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1961; amd. Sec. 1, Ch. 51, L. 1973; R.C.M. 1947, 89-1804(3).

85-7-2106. Back assessments. Any land or lands which may for any reason have escaped assessment in any previous year or years may be assessed or listed for the omitted years and omitted charges in any subsequent year at the time of the making of the assessment in and for such subsequent year, but no such assessment shall be made later than 3 years after the occurrence of such omission.

History: En. Sec. 49, Ch. 146, L. 1909; amd. Sec. 16, Ch. 145, L. 1915; amd. Sec. 1, Ch. 148, L. 1921; re-en. Sec. 7235, R.C.M. 1921; amd. Sec. 19, Ch. 157, L. 1923; re-en. Sec. 7235, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1961; amd. Sec. 1, Ch. 51, L. 1973; R.C.M. 1947, 89-1804(4).

Cross-References

United States contracts — cancellation of assessment on amended contracts, 85-7-2118.

85-7-2107. Procedure for the determination of irrigable area. (1) For the purpose of determining the number of acres of irrigable lands in each 40-acre tract or fractional lot as designated by United States government survey or platted lot, if land is subdivided in lots and blocks (or whenever land is owned in less than 40-acre tracts or in less than the platted lot, in each tract) of land in the district or subdistrict, the board of commissioners of any irrigation district established under part 1, whenever considered advisable and at any time except as otherwise provided, may cause a careful topographical survey and map of the lands to be made, as well as a specific examination of the character of the soil of each tract. Upon completion of the survey and maps and examination, the board shall give notice that at a meeting of the board, to be held at the office of the board on a day to be fixed in the notice, the board will determine the irrigable area of each tract of land in the district or subdistrict and that it will hear and consider any objection on the part of any landowner in the district, or in a subdistrict if only the irrigable area of the subdistrict is being determined, to the determination and to adjustment of the irrigable area of the district or subdistrict or of any lands within any tract or subdivision of the district or subdistrict. It is not necessary to describe the tracts in the notice. The notice must be given by publication once a week for 2 successive calendar weeks in a newspaper of general circulation in the county where the office of the board is located, and whenever lands of any irrigation district or subdistrict lie in more than one county, the notice must also be published in a newspaper or newspapers of general circulation in each county. The last publication of the notice must be at least 5 days prior to the date fixed for the meeting.

(2) At the meeting, the board shall determine and fix the number of acres in each tract or subdivision irrigable from the works or proposed works of the district or subdistrict and shall hear all persons interested who may appear and shall continue in session from day to day (exclusive of Sundays and legal holidays) as long as may be necessary and until the determination of irrigable area is completed. The board shall hear and receive all evidence offered, including maps and surveys caused to be prepared by it as well as maps and surveys prepared by any owner of lands. Upon determination, the irrigable area fixed is the acreage upon which any special tax or assessment must be levied, and each irrigable acre shall pay at the same rate as every other acre of irrigable land in the district or subdistrict, except as otherwise provided by law.

History: En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.1, R.C.M. 1935; amd. Sec. 22, Ch. 388, L. 1975; amd. Sec. 32, Ch. 460, L. 1977; R.C.M. 1947, 89-1805(part); amd. Sec. 25, Ch. 439, L. 1989.

Cross-References

Legal holidays and business days, 1-1-216.

85-7-2108. Taxes to be lien upon land. Any special tax or assessment levied for any purpose is a lien upon the entire 40-acre tract or fractional lot as designated by United States government survey or platted lot, if land is subdivided in lots and blocks (or whenever land is owned in less than 40-acre tracts or in less than the platted lot, against each such tract) of land in the district or subdistrict of which the irrigable area forms a part, and the lien shall attach to the entire tract as of January 1 in the year in which the special tax or assessment is levied.

History: En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.1, R.C.M. 1935; amd. Sec. 22, Ch. 388, L. 1975; amd. Sec. 32, Ch. 460, L. 1977; R.C.M. 1947, 89-1805(part); amd. Sec. 26, Ch. 439, L. 1989.

Cross-References

State tax liens, Title 15, ch. 16, part 4.

Liens, Title 71, ch. 3.

85-7-2109. List of all lands in district or subdistrict to be prepared. Upon completing the determination, the board shall fix, by appropriate resolution or order, the total acreage and the irrigable acreage of each tract or subdivision and shall prepare a list of all lands in the district or subdistrict. The list must contain an accurate description of each 40-acre tract or fractional lot as designated by United States government survey or platted lot, if land is subdivided in lots and blocks (or whenever land is owned in less than 40-acre tracts or in less than the platted lot, then of each such tract) of land in the district or subdistrict, the total acreage and the number of irrigable acres as fixed and determined, and the name of the owner or holder of title or evidence of title, ascertained as provided in 85-7-101 and 85-7-102. This list, when completed and adopted, must be filed in the office of the board and shall remain there for public inspection. A certified copy of the resolution and list must be filed with the county clerk and recorder of each county in which any portion of the lands in the district is situated. The lands not situated in the county in which the copy is filed must be omitted from the copy.

History: En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.1, R.C.M. 1935; amd. Sec. 22, Ch. 388, L. 1975; amd. Sec. 32, Ch. 460, L. 1977; R.C.M. 1947, 89-1805(3); amd. Sec. 27, Ch. 439, L. 1989.

85-7-2110. Nonirrigable lands not to be taxed. A special tax or assessment may not be levied against any 40-acre tract or fractional lot as designated by United States public survey or platted lot, if land is subdivided in lots and blocks (or whenever lands are owned in less than 40-acre tracts or in less than the platted lot, against each such tract) found by the board of commissioners to contain no irrigable land. A lien created after the order of determination may not attach to any nonirrigable tract, nor may the owner or owners of any nonirrigable tract or tracts have any vote or votes in any proceeding or election under the provisions of Chapter 146 of the Laws of 1909 or any amendment thereof or act supplementary thereto, after the making of the order, unless their land or a portion of their land is found by the board to contain an area irrigable from the works or proposed works of the district or subdistrict.

History: En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.1, R.C.M. 1935; amd. Sec. 22, Ch. 388, L. 1975; amd. Sec. 32, Ch. 460, L. 1977; R.C.M. 1947, 89-1805(4); amd. Sec. 28, Ch. 439, L. 1989.

85-7-2111. Refunds and cancellation of excess taxes. Upon the determination provided for in 85-7-2107 through 85-7-2113, the board of commissioners may refund any taxes paid or cancel any unpaid taxes or assessments levied upon an acreage in excess of that so fixed by the order of determination and whenever necessary may issue warrants therefor.

History: En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.1, R.C.M. 1935; amd. Sec. 22, Ch. 388, L. 1975; amd. Sec. 32, Ch. 460, L. 1977; R.C.M. 1947, 89-1805(5).

85-7-2112. Confirmation of board actions by district court. (1) Within 60 days after the resolution adopting the list, the board of commissioners may petition the district court for confirmation of its acts in determining the irrigable area and in refunding or canceling any taxes or assessments. The majority in number and acreage of the holders of title or evidence of title to lands in the district or the majority in number and acreage of the holders of title or evidence of title in the subdistrict if only the irrigable area of the subdistrict is to be reviewed, determined as provided in 85-7-101 and 85-7-102, may likewise within the 60-day period petition the district court for review of the actions of the board. However, one of these proceedings, if prosecuted to determination, is exclusive of the other. The court may order any assessment of taxes upon any land or lands to be reduced or raised according to the irrigable area as found by the court or taxes previously levied upon any area shown to be excessive to be refunded or canceled.

(2) The provisions of 85-7-1808 through 85-7-1810 regarding the procedure as well as the right and time to appeal apply to any proceeding instituted pursuant to this section, provided nothing in this section affects or impairs the lien of any bonds issued by the district. If confirmation proceedings are held and a certified copy of the order of confirmation is filed with the county clerk and recorder of the county in which any portion of the lands is situated, it is not necessary to file in the office the certified copy of the resolution and order of the board or of the list provided for in this section.

History: En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.1, R.C.M. 1935; amd. Sec. 22, Ch. 388, L. 1975; amd. Sec. 32, Ch. 460, L. 1977; R.C.M. 1947, 89-1805(6), (7); amd. Sec. 29, Ch. 439, L. 1989.

85-7-2113. Effect of federal involvement. Whenever districts have been established in order to cooperate with the United States under the federal reclamation laws or under any act of congress which permits the performance by the United States of work in this state, for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation, or maintenance of construction works or for the assumption as principal or guarantor of indebtedness to the United States on account of district lands, the determination of the irrigable area of the lands in the district may be made by the board of commissioners in the manner provided in 85-7-2107 through 85-7-2112 or by the United States at the option of the latter, and, if the United States determines the irrigable area, the proceeding for the apportionment and distribution of the costs of the proposed works or improvements provided for in 85-7-2114 through 85-7-2116 may not be had.

History: **En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.1, R.C.M. 1935; amd. Sec. 22, Ch. 388, L. 1975; amd. Sec. 32, Ch. 460, L. 1977; R.C.M. 1947, 89-1805(8).**

85-7-2114. Apportionment of costs when bonds issued. (1) Whenever a petition for the issuance of bonds of any irrigation district established under the provisions of Title 85, chapter 7, part 1, has been filed as provided in 85-7-2012 through 85-7-2015, the board of commissioners of the district shall examine or cause to be examined each 40-acre tract or fractional lot as designated by United States public survey or platted lot, if land is subdivided in lots and blocks, or whenever land is owned in less than 40-acre tracts or in less than the platted lot, each tract of land in the district or of land in a subdistrict if the bonds are to be issued on behalf of the subdistrict and cause a careful topographical survey and map to be made in the manner provided for in 85-7-2107. Upon the examination, the board shall determine the number of irrigable acres in each tract and shall apportion and distribute the cost of the works or improvements for which the bonds are to be issued over the tracts within the district or subdistrict according to the irrigable area in each of the tracts or subdivisions so that each irrigable acre is required to bear the same burden of the costs as each other irrigable acre in the district or subdistrict, except as otherwise provided by law. The special tax or assessment levied to meet the principal of and interest on the bonds is a lien upon the entire tract of which the irrigable area forms a part or portion as of January 1 of the year in which the special tax or assessment is levied, and the number of irrigable acres in each tract so determined may not be diminished but may be increased during the term for which the bonds are issued or until the bonds are liquidated in full.

(2) Whenever a proceeding for the determination, in whole or in part, of the irrigable area of the lands in the district or subdistrict has already been had or a topographical survey or maps of the lands prepared or a court confirmation of prior proceedings, in part or in full, the board may, in its discretion, adopt all or portions of the prior proceedings and need not cause an additional survey or maps or examination of any of the tracts to be made or redetermine the irrigable area of any tract.

(3) The board shall make the determination after the hearing and shall fix the total acreage and the irrigable acreage and prepare a list of the irrigable area for filing, and the proceedings of the board in connection with the determination, including the hearing and notice of the hearing and order or resolution fixing the irrigable area and the preparation and filing of the list, must conform to the requirements set forth in 85-7-2107 through 85-7-2113. At the hearing, the board shall also determine the amount and rate per acre necessary to be levied against each irrigable acre in the district to meet the interest on and principal of the authorized bond issue. The tax levied is a lien upon the entire tract of which the irrigable area forms a part. If a landowner in the district or subdistrict appears before the board at that time and pays in cash the amount fixed against the landowner's land as its proportion of the amount found necessary for the purposes for which the bonds were authorized and are to be issued, that land must be excluded from the lien of the bond issue and the amount of bonds intended to be issued must be reduced by the amount of the payment. A person interested who fails to appear before the board at the meeting may not contest the proceedings of the board or any part of the proceedings except upon special application to the court in the proceedings for the confirmation of the bonds and a showing of reasonable excuse for failure to appear before the board.

History: **En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.2, R.C.M. 1935; amd. Sec. 23, Ch. 388, L. 1975; amd. Sec. 33, Ch. 460, L. 1977; R.C.M. 1947, 89-1806(1) thru (3); amd. Sec. 30, Ch. 439, L. 1989; amd. Sec. 2796, Ch. 56, L. 2009.**

85-7-2115. Objection by landowner. If a landowner objects to the proceedings of the board in determining the irrigable area in the landowner's own or any other tract of land or the amount or rate per acre of the special tax and assessment to be levied against each irrigable acre in the district or subdistrict for the purposes of the proposed bond issue and the objection is overruled by the board, the objection without further proceedings must be regarded as appealed to the district court. When confirmed, the order overruling the objection and confirming the order of the board determining the irrigable area of each tract of land and apportioning the cost of the improvement to each tract becomes final, binding, and conclusive upon the landowner and upon the district unless appealed.

History: En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.2, R.C.M. 1935; amd. Sec. 23, Ch. 388, L. 1975; amd. Sec. 33, Ch. 460, L. 1977; R.C.M. 1947, 89-1806(4); amd. Sec. 31, Ch. 439, L. 1989; amd. Sec. 2797, Ch. 56, L. 2009; amd. Sec. 16, Ch. 495, L. 2021.

85-7-2116. Restrictions on reduction of taxable acreage. Whenever the irrigable area of the lands in an irrigation district or subdistrict has been determined and confirmed, the owner or holder of title or evidence of title to lands in the district or subdistrict, during the period when any bonds are issued and outstanding, may not have the taxable acreage of the owner's or titleholder's lands fixed or adjudicated in the manner provided by 85-7-1841 through 85-7-1845 in a manner or to an extent as to reduce the acreage subject to the payment of the bonds or interest or in a manner as to affect the security of the bonds or interest on the bonds.

History: En. Sec. 20, Ch. 157, L. 1923; re-en. Sec. 7235.2, R.C.M. 1935; amd. Sec. 23, Ch. 388, L. 1975; amd. Sec. 33, Ch. 460, L. 1977; R.C.M. 1947, 89-1806(5); amd. Sec. 32, Ch. 439, L. 1989; amd. Sec. 2798, Ch. 56, L. 2009.

85-7-2117. Conclusiveness of tax or assessment. In determining the proper and just tax or assessment to be levied against any land for district purposes, the finding of the board of commissioners of the district, in the absence of fraud or mistake, are conclusive and final, except as otherwise provided in this part.

History: En. Sec. 50, Ch. 146, L. 1909; re-en. Sec. 7237, R.C.M. 1921; re-en. Sec. 7237, R.C.M. 1935; R.C.M. 1947, 89-1809; amd. Sec. 157, Ch. 584, L. 1999; amd. Sec. 12, Ch. 93, L. 2007.

85-7-2118. United States contracts — cancellation of assessment on amended contracts. In any case where the board of commissioners of any irrigation district has made a levy or assessment under the provisions of 85-7-2104 through 85-7-2106 and included therein any amount due the United States under any contract or agreement for the purchase of any irrigation works or for the operation and maintenance of any irrigation works, while acting as fiscal agent for the United States, or under any authorization of the district by the United States to make collections of moneys for or on behalf of the United States in connection with any federal reclamation project, as provided in 85-7-1906, and the United States shall thereafter modify or supplement such contract or agreement so as to eliminate certain charges under said contract or agreement or so as to make such charges due at a later date or dates than originally provided in said contract or agreement, said board of commissioners are empowered to direct the cancellation of said levy or assessment theretofore made to raise funds to pay the United States that are under such modification or supplemental contract or agreement made due and payable at a later date or dates.

History: En. Sec. 1, Ch. 103, L. 1923; re-en. Sec. 7235.3, R.C.M. 1935; R.C.M. 1947, 89-1807.

85-7-2119. United States contracts — assessments where district partly outside state. Where a contract has been entered into or may be hereafter entered into between an irrigation district and the United States, the board of commissioners shall have the power to levy assessments against all of the land within the district for any and all of the purposes hereinbefore enumerated and, in addition thereto, the power to levy assessments against any or all of the lands in said district in compliance with such contract. Where irrigation works lie partly in the state of Montana and partly in an adjacent state, the board of commissioners may contract with the district or districts in the adjacent state for the mutual construction of works, operation and maintenance of works, drainage, and other matters and things pertaining to said works and shall have the power to levy assessments against any or all lands within the district necessary to carry out the provisions of such contract.

History: En. Sec. 1, Ch. 4, Ex. L. 1921; re-en. Sec. 7236, R.C.M. 1921; amd. Sec. 2, Ch. 103, L. 1923; re-en. Sec. 7236, R.C.M. 1935; R.C.M. 1947, 89-1808.

85-7-2120 through 85-7-2124 reserved.

85-7-2125. Terminated. Sec. 5, Ch. 347, L. 2003.

History: En. Sec. 1, Ch. 347, L. 2003.

85-7-2126 through 85-7-2130 reserved.

85-7-2131. Funds for payment of each series of bonds to be kept distinct. When more than one series of bonds shall have been issued by a district, the funds for the payment of each series shall be kept separate and distinct. When contract is made between the district and the United States, accompanying which bonds of the district have not been deposited with the United States, as provided in 85-7-1906, the funds for the payment to be made under any such contract shall be kept separate and distinct.

History: En. Sec. 52, Ch. 146, L. 1909; amd. Sec. 17, Ch. 145, L. 1915; re-en. Sec. 7238, R.C.M. 1921; re-en. Sec. 7238, R.C.M. 1935; R.C.M. 1947, 89-1810.

85-7-2132. Sinking fund for straight maturity bonds. When straight maturity bonds are issued, the board of commissioners of the district shall create and maintain a sinking fund sufficient to pay and discharge the bonds at maturity. If the bonds are issued for 20 years or less, there shall be annually levied for the sinking fund a special tax or assessment sufficient to produce a net amount represented by the quotient found by dividing the aggregate amount of the principal of the bonds by the number of years the bonds have to run; but if the bonds are issued for more than 20 years, it is not necessary to levy a special tax or assessment for sinking fund until the 20th year prior to the maturity of the bonds, at which time and each year thereafter there shall be levied and collected a special tax or assessment sufficient to produce a net sum equal to one-twentieth part of the aggregate amount of the principal of the bonds.

History: En. Sec. 46, Ch. 146, L. 1909; amd. Sec. 14, Ch. 145, L. 1915; re-en. Sec. 7232, R.C.M. 1921; re-en. Sec. 7232, R.C.M. 1935; amd. Sec. 34, Ch. 234, L. 1971; amd. Sec. 30, Ch. 460, L. 1977; R.C.M. 1947, 89-1801(part).

Cross-References

Relations with United States, 85-7-1906.

85-7-2133. Role of county officers in collection of tax or assessment. (1) A certified copy of the resolution authorizing the issuance of bonds under this chapter must be filed with the clerk of the board of county commissioners of each county in which the lands of the irrigation district lie, and the special tax or assessment provided for in the resolution must be levied and collected as prescribed and when collected must, by the county treasurer having custody of the funds of the district, be placed in a special fund and used solely for the payment of all bonds issued under the provisions of this chapter and interest on the bonds as long as any of the bonds or interest coupons remain outstanding and unpaid. Whenever the payments are made for amounts due or to become due to the United States under a contract between the district and the United States for which bonds of the district have not been deposited with the United States as provided in 85-7-1906, the special fund must be known as the United States contract fund.

(2) The county treasurer of the county where the office of an irrigation district is located is the custodian of all funds belonging to the district, and the treasurer shall pay out the funds upon the order of the board of commissioners, except payments on bonds and interest for which an order is not necessary. If any portion of the funds belonging to a district has been collected for the purpose of establishing a reserve fund, the county treasurer shall pay that portion to the district on order of the district's board of commissioners who may invest the funds in legal investments backed, insured, or guaranteed by the United States or the state of Montana, including federal and state agency obligations. If money of a district in the United States contract fund established pursuant to subsection (1) is in excess of the amount needed to pay a district's next annual contract obligation or obligations to the United States, the excess or any part of the excess may, upon order of the district's board of commissioners and with the consent of the United States officer administering the contract for which the contract fund has been established, be paid to the district for use in meeting other obligations of the district. The orders of the board of commissioners must be signed by the president and secretary of the board and must bear the official seal of the district.

History: (1)En. Sec. 46, Ch. 146, L. 1909; amd. Sec. 14, Ch. 145, L. 1915; re-en. Sec. 7232, R.C.M. 1921; re-en. Sec. 7232, R.C.M. 1935; amd. Sec. 34, Ch. 234, L. 1971; amd. Sec. 30, Ch. 460, L. 1977; Sec. 89-1801, R.C.M. 1947; (2)En. Sec. 53, Ch. 146, L. 1909; amd. Sec. 18, Ch. 145, L. 1915; re-en. Sec. 7239, R.C.M. 1921; re-en. Sec. 7239, R.C.M. 1935; amd. Sec. 1, Ch. 137, L. 1971; amd. Sec. 34, Ch. 460, L. 1977; Sec. 89-1811, R.C.M. 1947; R.C.M. 1947, 89-1801(3), 89-1811; amd. Sec. 3, Ch. 166, L. 1987; amd. Sec. 2799, Ch. 56, L. 2009.

85-7-2134. Levy of taxes and assessments by county commissioners. If for any reason a levy of taxes or assessments under 85-7-2104 is not made for any irrigation district in any year by the board of commissioners of the district within the time provided by 85-7-2104, the board of county commissioners of the county in which the district is situated shall, not later than the second Monday in August, ascertain the total amount to be raised for all purposes of the district. The board of county commissioners shall make the levy pursuant to 85-7-2104 that should have been made by the board of commissioners of the district and shall furnish the county clerk with a list of the lands and the amount of taxes or assessments as provided in 85-7-2136. The levy has the same force and effect as though made by the board of commissioners of the district. This section applies only to irrigation districts having a bonded indebtedness and actually in possession of a dependable water supply system and furnishing substantial amounts of water to bona fide users.

History: En. Sec. 1, Ch. 89, L. 1931; re-en. Sec. 7240.1, R.C.M. 1935; R.C.M. 1947, 89-1813; amd. Sec. 158, Ch. 584, L. 1999; amd. Sec. 13, Ch. 93, L. 2007.

Cross-References

County taxation, Title 7, ch. 6, part 25.

85-7-2135. Transmission of funds from other counties. Where the lands of any district lie in more than one county, the district taxes or assessments collected in counties in which the principal office is not located shall be transmitted, on or before the 10th day of each month except June and December, by the county treasurer of such county to the county treasurer of the county wherein the office of the district is located.

History: En. Sec. 55, Ch. 146, L. 1909; re-en. Sec. 7241, R.C.M. 1921; re-en. Sec. 7241, R.C.M. 1935; amd. Sec. 2, Ch. 78, L. 1961; R.C.M. 1947, 89-1814; amd. Sec. 1, Ch. 252, L. 1987.

85-7-2136. Collection of taxes or assessment. (1) On or before the third Monday in August of each year, the board of commissioners shall furnish to the department of revenue a correct list of all the district lands in the county, together with the amount of the total taxes or assessments against the lands for district purposes. The department of revenue shall immediately upon receipt of the list enter the assessment roll in the property tax record of the county subject to taxation or assessment under 85-7-2104 for each year.

(2) The county treasurer of each county in which any irrigation district is located, in whole or in part, shall collect and receipt for all taxes and assessments levied by the district, in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. The treasurer must receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not.

(3) During the water delivery season, as determined by the irrigation district commissioners, the county treasurer shall make available to the board of commissioners of an irrigation district notice of the receipt of payments of district assessments by 9 a.m. on the day following receipt of those payments.

(4) If requested in writing by a board of commissioners of an irrigation district, the county treasurer may receive assistance from an employee of the irrigation district or a commissioner of the district for the purpose of collecting district assessments as provided in 15-16-102, investing district funds as directed by the board of commissioners of the district, and preparing district assessment notices.

(5) When any real estate on account of which the district taxes and assessments have been levied has been sold to the county and a tax lien certificate is held by the county, the taxpayer may pay to the treasurer at any time any semiannual installment of the district tax or assessment, together with the penalty and interest to date of payment on the installment. However, the payment may not be considered a redemption of the property from the tax lien but must be credited on account of any redemption that may be made. In case of any payment pursuant to this subsection, a separate tax receipt must be issued showing exactly what assessments have been paid and showing that no other tax on the real estate has been received by the treasurer. The county treasurer may not collect, receive, or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any irrigation district upon which an assessment for the purposes of the irrigation district has been levied unless the assessment levied for irrigation district purposes is either paid as permitted in this section and the receipt for the payment is presented to the county treasurer at the time the taxes are paid or paid at the time the irrigation district taxes are paid.

History: (1)En. Sec. 54, Ch. 146, L. 1909; amd. Sec. 2, Ch. 96, L. 1919; re-en. Sec. 7240, R.C.M. 1921; re-en. Sec. 7240, R.C.M. 1935; amd. Sec. 1, Ch. 14, L. 1945; amd. Sec. 65, Ch. 391, L. 1973; Sec. 89-1812, R.C.M. 1947 (2)En. Sec. 1, Ch. 71, L. 1923; amd. Sec. 1, Ch. 73, L. 1935; re-en. Sec. 2172.1, R.C.M. 1935; amd. Sec. 1, Ch. 188, L. 1943; Sec. 84-4108, R.C.M. 1947; R.C.M. 1947, 84-4108(part), 89-1812; amd. Sec. 4, Ch. 584, L. 1989; amd. Sec. 1, Ch. 485, L. 1993; amd. Sec. 154, Ch. 27, Sp. L. November 1993; amd. Sec. 159, Ch. 584, L. 1999; amd. Sec. 14, Ch. 93, L. 2007; amd. Sec. 29, Ch. 110, L. 2007; amd. Sec. 33, Ch. 67, L. 2017.

85-7-2137. Failure to levy or collect tax or assessment. In the event that for any reason a special tax or assessment provided for cannot or may not be levied and collected in time to meet any interest falling due on any bonds issued, the board of commissioners shall provide for and pay such interest when due, either out of any of the funds in hand in the treasury of the district not otherwise appropriated or by warrants drawn against the next district tax or assessment levied or to be levied. These warrants shall be in addition to those mentioned in 85-7-2001.

History: En. Sec. 46, Ch. 146, L. 1909; amd. Sec. 14, Ch. 145, L. 1915; re-en. Sec. 7232, R.C.M. 1921; re-en. Sec. 7232, R.C.M. 1935; amd. Sec. 34, Ch. 234, L. 1971; amd. Sec. 30, Ch. 460, L. 1977; R.C.M. 1947, 89-1801(4).

85-7-2138. Surplus in construction fund. In the event of any money remaining in the construction fund after the completion of any district project, the same may be transferred to an appropriate fund for the redemption of the outstanding bonds of the district.

History: En. Sec. 62, Ch. 146, L. 1909; re-en. Sec. 7257, R.C.M. 1921; re-en. Sec. 7257, R.C.M. 1935; R.C.M. 1947, 89-2104.

85-7-2139. Transfer of funds. The board of commissioners shall have power to transfer money from any one fund to any other fund, except that no money shall be drawn from the sinking fund or construction fund, except as specifically provided in this chapter; provided, that no money in the United States contract fund shall ever be diverted to any other fund.

History: En. Sec. 63, Ch. 146, L. 1909; amd. Sec. 20, Ch. 145, L. 1915; re-en. Sec. 7258, R.C.M. 1921; re-en. Sec. 7258, R.C.M. 1935; R.C.M. 1947, 89-2105.

85-7-2140. Investment of funds. The board of commissioners shall direct the investment of the funds in any bond sinking fund in legal investments backed, insured, or guaranteed by the United States or the state of Montana, including federal and state agency obligations, whenever in their judgment the investment may be to the best interest of the district. All such investments shall be converted into cash in time to meet the principal on the bonds payable from such sinking fund promptly at their maturity.

History: En. Sec. 46, Ch. 146, L. 1909; amd. Sec. 14, Ch. 145, L. 1915; re-en. Sec. 7232, R.C.M. 1921; re-en. Sec. 7232, R.C.M. 1935; amd. Sec. 34, Ch. 234, L. 1971; amd. Sec. 30, Ch. 460, L. 1977; R.C.M. 1947, 89-1801(5); amd. Sec. 4, Ch. 166, L. 1987.

85-7-2141. Repealed. Sec. 80, Ch. 130, L. 2005.

History: En. Sec. 6, Ch. 252, L. 1921; re-en. Sec. 7231, R.C.M. 1921; re-en. Sec. 7231, R.C.M. 1935; R.C.M. 1947, 89-1714.

85-7-2142. Misconduct in relation to bond funds. (1) (a) Except as provided in subsection (1)(b), when any officer or officers or board or body of officers of any irrigation district of the state are or shall be required by law to provide by a levy of taxes or by certifying the amount of money required or otherwise a sinking fund or fund required to pay at maturity any bonds hereafter issued or created, such officer or officers and the members of such board or body of officers shall be jointly and severally liable to the irrigation district which they represent if they shall fail to perform any such duties so required by law, as in this section hereby specified, in an amount equal to the sum which would have been added to such fund had they performed such duty.

(b) When any such board shall fail or neglect to perform any such duty, no minority member of said board who shall have moved said board or voted in favor of a performance of such duty shall be held liable.

(2) Any person or persons who shall take, use, appropriate, or permit to be taken, used, or appropriated any portion of any such fund, as herein specified, for any purpose other than that permitted by law shall be jointly and severally liable to the irrigation district to which said fund shall belong for the portion of such fund so unlawfully taken, used, or appropriated.

History: En. Secs. 1, 2, Ch. 5, L. 1923; re-en. Secs. 463.1, 463.2, R.C.M. 1935; R.C.M. 1947, 59-534(part), 59-535(part).

Cross-References

Officer's liability with respect to bond funds, 7-7-121.

85-7-2143. Prosecution for misconduct. It shall be the duty of the county attorney in each county to commence and prosecute all actions to enforce any liability created in 85-7-2142. Such actions shall be tried as civil actions at law.

History: En. Sec. 3, Ch. 5, L. 1923; re-en. Sec. 463.3, R.C.M. 1935; R.C.M. 1947, 59-536.

Cross-References

County Attorney to be legal advisor of county and other subdivisions, 7-4-2711.

85-7-2144 through 85-7-2150 reserved.

85-7-2151. Delinquent sale and redemption. Delinquent sales of land for unpaid taxes or assessments shall be made in the same manner as for state and county taxes in the respective counties where such lands are situated. The right of redemption shall in all cases be made the same as in cases where lands are sold for state or county taxes.

History: En. Sec. 56, Ch. 146, L. 1909; amd. Sec. 2, Ch. 127, L. 1913; re-en. Sec. 7242, R.C.M. 1921; re-en. Sec. 7242, R.C.M. 1935; R.C.M. 1947, 89-1815.

Cross-References

Tax liens, Title 15, ch. 17.

85-7-2152. Proceeds of sale. (1) Whenever any lot, tract, piece, or parcel of land included within and forming a part of any irrigation district created under the provisions of this chapter or included within any extension of the district is sold by the treasurer of the county where the land is situated in the manner provided by law for the sale of lands for delinquent taxes for state and county purposes and taxes or assessments of the irrigation district form all or a part of the taxes for which the lands are sold, the county treasurer making the sale or sales shall place to the credit of the proper funds of the irrigation district, out of the proceeds of the sale or sales, the total tax or assessment of the irrigation district, inclusive of the interest and penalty on the proceeds as provided for by the general laws relating to delinquent taxes for state and county purposes.

(2) When the county assigns a tax lien as provided in 15-17-323, the county treasurer of the county shall, upon the issuance of the assignment certificate to the assignee, issue to the irrigation district, in its corporate name, a debenture certificate for the amount of taxes and assessments due to the irrigation district from the lands and premises for which a tax lien was assigned, inclusive of the interest and penalty. The certificate is evidence of and conclusive of the interest and claim of the irrigation district in, to, against, and upon the lands and premises for which the county assigned the tax lien. After the issuance of the certificate, the sum named in the certificate and the taxes and assessments of the district evidenced by the certificate bear interest at the rate of 1% a month from the date of the certificate until redeemed in the manner provided for by law for the redemption of the lands sold for delinquent state and county taxes or until paid from the proceeds of the sale of the lands and premises described in the certificate in the manner provided for by law. Duplicates of certificates issued to the irrigation district must be filed in the office of the county clerk and county treasurer of the county with the tax lien certificate of the lands and premises.

History: En. Sec. 2, Ch. 127, L. 1913; re-en. Sec. 7243, R.C.M. 1921; re-en. Sec. 7243, R.C.M. 1935; amd. Sec. 35, Ch. 460, L. 1977; R.C.M. 1947, 89-1816; amd. Sec. 53, Ch. 587, L. 1987; amd. Sec. 30, Ch. 110, L. 2007; amd. Sec. 34, Ch. 67, L. 2017.

85-7-2153. Assignment of debenture certificates. The certificates provided for by 85-2-2152 are assignable and may be sold or negotiated by the board of commissioners of the irrigation district and the proceeds of the sale delivered to and deposited with the county treasurer of the county for proper credit to the respective funds of the irrigation district. Upon the sale, negotiation, or transfer of a certificate, the lien of the irrigation district vests in the purchaser of the certificate and is only divested by the payment to the purchaser or the county treasurer of the county, for the purchaser's use, of the sum for which the certificate is issued and 1% additional for each month that passes from the date of the certificate until redeemed as provided for in 85-7-2154.

History: En. Sec. 2, Ch. 127, L. 1913; re-en. Sec. 7244, R.C.M. 1921; re-en. Sec. 7244, R.C.M. 1935; R.C.M. 1947, 89-1817; amd. Sec. 2800, Ch. 56, L. 2009.

85-7-2154. Redemption of lands sold. Upon the redemption of any lands so sold for taxes in the manner provided for by Title 15, chapter 18, the county treasurer of said county, out of the redemption money, shall pay to the holder or holders of such certificate or certificates the sums for which the same were issued, with interest as therein provided to the date of the redemption of said lands.

History: En. Sec. 2, Ch. 127, L. 1913; re-en. Sec. 7245, R.C.M. 1921; re-en. Sec. 7245, R.C.M. 1935; R.C.M. 1947, 89-1818; amd. Sec. 54, Ch. 587, L. 1987.

85-7-2155. Sale by county commissioners when land not redeemed. When lands and premises with attached tax liens and upon and against which the certificates have been issued for the taxes and assessments of the irrigation district are not redeemed within the time provided for by 15-18-111, the board of county commissioners of the county, within 3 months thereafter, shall cause these lands and premises to be sold as provided for by law, and out of the proceeds of the sale, the county treasurer of the county shall pay to the holder or holders of the certificates the sum for which the same were issued, with interest as provided for to the date of the sale of the lands by the board of county commissioners, and no lands and premises so held by any county and against which the certificates provided for by this chapter have been issued may, upon such sale, be struck off or sold for a less sum than the amount of taxes and assessments of the irrigation district represented by the certificate, inclusive of the interest thereon, in addition to the state and county taxes, if any, against the same.

History: En. Sec. 2, Ch. 127, L. 1913; re-en. Sec. 7246, R.C.M. 1921; re-en. Sec. 7246, R.C.M. 1935; amd. Sec. 36, Ch. 460, L. 1977; R.C.M. 1947, 89-1819; amd. Sec. 55, Ch. 587, L. 1987; amd. Sec. 35, Ch. 67, L. 2017.

85-7-2156. Proceedings in which county is possessor of tax lien and lien is not redeemed. If the county is the possessor of a tax lien on property assessed for irrigation district purposes and debenture certificates have been issued for the taxes and assessments of the irrigation district, as provided for in 85-7-2152, and the tax lien has not been redeemed before the next annual assessment for irrigation purposes becomes delinquent, debenture certificates for each year's irrigation district taxes and assessments must be issued against the property and must be included in and satisfied by any redemption thereof, with interest as provided for in 85-7-2152, and must be paid from the proceeds of sale of the lands by the board of county commissioners, if not redeemed as provided for by law.

History: En. Sec. 2, Ch. 127, L. 1913; re-en. Sec. 7247, R.C.M. 1921; re-en. Sec. 7247, R.C.M. 1935; R.C.M. 1947, 89-1820; amd. Sec. 56, Ch. 587, L. 1987; amd. Sec. 36, Ch. 67, L. 2017.

85-7-2157. Purchase of lands by district — revolving fund, credits, and expenditures. (1) When a tax lien is attached to property for which a portion of the delinquent taxes are taxes and assessments levied and assessed by an irrigation district, the commissioners of the irrigation district may take an assignment of the tax lien for the total amount of all delinquent taxes and assessments, penalty, and interest against the land. The county treasurer shall assign the tax lien to the irrigation district and issue an assignment certificate to the irrigation district the same as assignment certificates are issued to other assignees. For the purpose of paying the taxes, assessments, interest, and penalties, the commissioners of the irrigation district may create by resolution a revolving fund for the purchase of tax liens. The commissioners may provide funds for the revolving fund by levy, bond issue, or otherwise. The district may pay the taxes, assessments, interest, and penalties by issuing a warrant to the county treasurer against the revolving fund if there is sufficient money in the fund.

(2) When taxes are paid by the district as provided in this part, the county treasurer shall distribute that portion of the tax belonging to the irrigation district to the several funds as designated in the tax levy and assessment. However, if the board of commissioners of the irrigation district file with the county treasurer a certified copy of the resolution passed by the commissioners requesting nondistribution by the county treasurer of the portion of the tax belonging to the district, the county treasurer may not distribute that portion of the tax belonging to the irrigation district to the several funds as designated in the tax levy and assessment, but the total amount due the irrigation district must be credited by the treasurer to the revolving fund. If money is credited to the revolving fund, at the time of the assignment by the district of the tax lien or of the sale of property obtained through the certificate, the funds that are realized from the sale must be deposited with the county treasurer, together with the rentals received

from the property, and the treasurer shall credit the proceeds of the redemption sale or rental pro rata to the several funds of the district in accordance with the original levy or assessment.

(3) At the time of redemption or of the assignment by the district of the tax lien certificate or sale of the property obtained through the certificate, the funds that are realized must be deposited with the county treasurer, together with rentals received from the property. The county treasurer shall credit the proceeds of the redemption, sale, or rentals to the revolving fund to the extent required to reimburse the revolving fund in full. If the sum realized permits, any excess must be credited to the several funds of the district in accordance with the original levy and assessment. Expenditures may not be made from the revolving fund except as provided in this section. The board of irrigation district commissioners may, by resolution, when the fund becomes inactive, transfer the balance to a sinking fund to pay any indebtedness that had been incurred by the district by reason of the creation of the revolving fund.

History: En. Sec. 1, Ch. 89, L. 1925; amd. Sec. 1, Ch. 57, L. 1929; re-en. Sec. 7248.1, R.C.M. 1935; R.C.M. 1947, 89-1822; amd. Sec. 31, Ch. 110, L. 2007; amd. Sec. 37, Ch. 67, L. 2017.

Cross-References

Powers of District Commissioners to acquire and manage tax sale lands, 85-7-2162.
Application of 85-7-2157, 85-7-2164.

85-7-2158. Purchase of lands by district — tax lien assignments and payment. (1) Any irrigation district may:

(a) take an assignment of a tax lien; or

(b) if a deed has issued to the county, purchase the lands from the county by paying all state, county, city, school district, and other delinquent taxes, together with penalty, interest, and costs of publication and sale to the county treasurer of the county making the sale.

(2) The payment must be made by the commissioners of the district by issuing and delivering to the county treasurer a warrant drawn against the revolving fund of the district if there is sufficient money in the fund to pay the warrant in full upon demand. The county treasurer shall then assign the tax lien to the irrigation district, or the commissioners of the county shall convey the lands to the district if the tax deed was issued to the county.

History: En. Sec. 2, Ch. 89, L. 1925; re-en. Sec. 7248.2, R.C.M. 1935; R.C.M. 1947, 89-1823; amd. Sec. 32, Ch. 110, L. 2007; amd. Sec. 38, Ch. 67, L. 2017.

Cross-References

School district inclusive of community college district, 20-15-403.

85-7-2159. Issuance of tax deed. If there has been no redemption of tax liens assigned to an irrigation district or any other person as provided by law and notice has been given as required in 15-18-212, the county treasurer of the county within which the lands are situated shall issue a tax deed for the lands to the irrigation district or any other holder of an assignment certificate.

History: En. Sec. 3, Ch. 89, L. 1925; re-en. Sec. 7248.3, R.C.M. 1935; R.C.M. 1947, 89-1824; amd. Sec. 305, Ch. 42, L. 1997; amd. Sec. 33, Ch. 110, L. 2007; amd. Sec. 39, Ch. 67, L. 2017.

Cross-References

Issuing tax deed, Title 15, ch. 18, part 2.

85-7-2160. Sale by district of purchased tax-deed lands. After the issuance of any such tax deeds to an irrigation district, the commissioners of such district shall have power to sell and convey the lands so purchased, or any part thereof, at either public or private sale whether or not the price received therefor equals the amount of delinquent taxes, assessments, penalties, interest, and costs against said lands. If such lands be offered for sale at public sale, such commissioners may reject any and all bids thereon. No such lands shall be sold by said commissioners at private sale until the same shall have been offered for sale at public sale, and no such lands shall be sold at private sale at a price less than the highest price bid therefor at the public sale at which such lands are offered. If no bid is received for such lands when the same are offered for sale at public sale, the commissioners may then sell the same in such manner and for such price as in their judgment they shall deem to be for the best interests of said district.

History: En. Sec. 4, Ch. 89, L. 1925; re-en. Sec. 7248.4, R.C.M. 1935; R.C.M. 1947, 89-1825.

85-7-2161. Action to quiet title in district. If any such lands are conveyed to any irrigation district, it may maintain an action to quiet title to said lands in said district in the manner provided by the laws of Montana for quieting title to real property.

History: En. Sec. 5, Ch. 89, L. 1925; re-en. Sec. 7248.5, R.C.M. 1935; R.C.M. 1947, 89-1826.

Cross-References

Quiet title — tax deed property, Title 15, ch. 18, part 4.

85-7-2162. Powers of district commissioners to acquire and manage tax lien lands. (1) In addition to the powers of irrigation districts, the commissioners of every irrigation district established and organized under and by virtue of the laws of the state may:

(a) purchase lands within their respective districts that had been sold and conveyed to the county for nonpayment of taxes and assessments, take assignments of tax liens, and take title to the land for their district;

(b) own, manage, operate, lease, sell, and dispose of the land for the use and benefit of their respective districts;

(c) sue and be sued in reference to the lands in the name of their respective irrigation districts and commence, maintain, and prosecute suits to quiet title to the lands and any other suits in equity or actions at law with reference to the lands, the same as any other individual or corporate owners of the lands; and

(d) do any other acts or things necessary or beneficial for their respective districts in connection with the lands.

(2) The lands must be offered for sale at public sale, and the commissioners may reject any bids on the land if, in their judgment, the bids are insufficient. The lands may not be sold at private sale at a price less than the highest bid made at the public sale at which the lands were offered for sale. If a bid is not received for the land when the land is offered at public sale, the commissioners may then sell the land in the manner, at the price, and upon the terms that they choose.

(3) The board of commissioners of any irrigation district may do what is necessary to carry out the provisions and intentions of 85-7-2157 through 85-7-2164.

History: En. Sec. 6, Ch. 89, L. 1925; amd. Sec. 1, Ch. 36, L. 1933; re-en. Sec. 7248.6, R.C.M. 1935; R.C.M. 1947, 89-1827; amd. Sec. 34, Ch. 110, L. 2007; amd. Sec. 40, Ch. 67, L. 2017.

85-7-2163. Granting of tax deed. The holder of the assignment certificate must be granted a tax deed by the county treasurer in the manner and form provided by Title 15, chapter 18.

History: En. Sec. 7, Ch. 89, L. 1925; re-en. Sec. 7248.7, R.C.M. 1935; R.C.M. 1947, 89-1828; amd. Sec. 57, Ch. 587, L. 1987; amd. Sec. 35, Ch. 110, L. 2007; amd. Sec. 41, Ch. 67, L. 2017.

85-7-2164. Application of certain sections. Sections 85-7-2157 through 85-7-2163 shall apply only when or after said irrigation district shall have commenced delivery of water to any lands included in such irrigation district.

History: En. Sec. 8, Ch. 89, L. 1925; re-en. Sec. 7248.8, R.C.M. 1935; R.C.M. 1947, 89-1829.

85-7-2165. Partitioning interest in tax-deed lands in certain districts. (1) In any case where an irrigation district established under the law of this state has incurred a bonded indebtedness or other indebtedness but has not constructed or purchased any irrigation plant or system for the irrigation of land in the district and more than 10 years have expired since the date of the creation of the irrigation district, the board of commissioners of such irrigation district and also the board of county commissioners of the county in which the lands of the district or any part thereof are situated shall have power to enter into an agreement, on behalf of such irrigation district and such county, for the partitioning of the respective interests of the irrigation district and the county in lands to which the county has taken tax deed and to make all necessary conveyances and assignments to carry out such agreement in such manner that the respective interests of the county and the irrigation district shall be fully segregated and thereafter separately owned and controlled.

(2) The board of commissioners of such irrigation district shall have power to sell and convey such lands and interests so acquired by the irrigation district or any part thereof and any other property or assets which such irrigation district may hold, at either public or private sale, or transfer such lands or interests in lands or other assets to creditors of the district

in payment of the indebtedness of such irrigation district, upon such terms as shall, in the judgment of the board of irrigation district commissioners, be deemed most advantageous to the irrigation district. The board of commissioners of such irrigation district and the board of county commissioners of the county in which the lands of such irrigation district or any part thereof are situated shall be and they are hereby authorized and empowered to do any and all things necessary to carry out the provisions and intentions of this section, the purpose of which is to enable such irrigation district to dispose of its assets in settlement of its liabilities and to be dissolved.

History: **En. Sec. 1, Ch. 207, L. 1943; R.C.M. 1947, 89-1830.**

85-7-2166. Liability of county treasurers. (1) The county treasurer to whom district funds or securities are entrusted is liable on the treasurer's bond for the safekeeping of the funds and securities. The funds must be properly divided into the respective funds for which district taxes or assessments were levied, including a United States contract fund, bond principal and interest fund, sinking fund to redeem bonds, maintenance fund, construction fund, and general fund. The construction fund must be available for the payment of the purchase price of all works, water rights, or other property purchased by or for the district and all expenses incident to those purchases, as well as for the payment of the cost of construction of works, including cost of engineering, superintendence, and other expenses incident to construction. All warrants issued for preliminary and organization expenses and all administrative expenses must be paid from the general fund.

(2) The county treasurer is authorized to receive, in lieu of cash, matured bonds, matured coupons, or interest coupons maturing within the year in payment of any tax or assessment levied for the payment of bonds or interest on bonds. The county treasurer at any time, upon the order of the board of commissioners of the district, shall turn over to the board any bonds or securities held by the treasurer and required to be delivered to the board in accordance with the provisions of this chapter. All bonds and interest coupons received or otherwise paid and all bonds of the district upon the payment must be immediately canceled and retained by the county treasurer as vouchers.

History: **En. Sec. 57, Ch. 146, L. 1909; amd. Sec. 19, Ch. 145, L. 1915; re-en. Sec. 7249, R.C.M. 1921; amd. Sec. 1, Ch. 114, L. 1933; re-en. Sec. 7249, R.C.M. 1935; R.C.M. 1947, 89-1831; amd. Sec. 2801, Ch. 56, L. 2009.**

Cross-References

Extent of sureties' liability — when less than full, 2-9-511.

Office of County Treasurer, Title 7, ch. 6, part 21.

85-7-2167. Sale or transfer of lands. Where any lands in any district are sold or transferred, either by deed, mortgage, foreclosure sale, or otherwise, such sale or transfer shall include the water belonging to and appurtenant to the land, whether or not the same is expressly stated in the deed, instrument of transfer, or decree, and such land shall be liable to special tax or assessment the same as if such sale or transfer had not been made.

History: **En. Sec. 58, Ch. 146, L. 1909; re-en. Sec. 7250, R.C.M. 1921; re-en. Sec. 7250, R.C.M. 1935; R.C.M. 1947, 89-1832.**

Part 22
Miscellaneous Provisions

85-7-2201. Limitation on actions attacking decrees. No suit, action, or proceeding shall be brought in any court in this state attacking the validity or regularity of any order or decree of the court purporting to establish a district hereunder or correcting or amending any order or decree creating a district after the expiration of 6 months from the date of the recording of the order establishing the district or the order correcting or amending the same. Nothing contained in this section shall be deemed or construed to confirm, approve, or validate any warrant issued, disbursement made, or contract entered into for the expenditure of money by the board of commissioners on behalf of any district.

History: **En. Sec. 2, Ch. 54, L. 1923; re-en. Sec. 7231.1, R.C.M. 1935; R.C.M. 1947, 89-1715(part).**

85-7-2202. Consolidation of appeals. If more than one appeal shall be pending at the same time concerning similar contests provided for in this chapter, such appeals shall be consolidated and tried together.

History: **En. Sec. 59, Ch. 146, L. 1909; re-en. Sec. 7254, R.C.M. 1921; re-en. Sec. 7254, R.C.M. 1935; R.C.M. 1947, 89-2101.**

85-7-2203. Nonsubstantial errors disregarded — rules of practice — costs. The court hearing any of the contests or proceedings herein provided for shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties to said action or proceeding. The rules of pleading and practice provided by Title 25 which are not inconsistent with the provisions of this chapter are applicable to all actions or proceedings herein provided for. The costs of any such hearing or contest may be allowed and apportioned between the parties or taxed to the losing parties, in the discretion of the court.

History: En. Sec. 60, Ch. 146, L. 1909; re-en. Sec. 7255, R.C.M. 1921; re-en. Sec. 7255, R.C.M. 1935; R.C.M. 1947, 89-2102.

85-7-2204. Written consent of owners — acknowledgment and recording requirements. Whenever any written consent is required to be given by or obtained from the owner or owners of any lands by any of the provisions of any of the sections of this chapter, such written consent must be acknowledged before some officer authorized to take acknowledgments and shall be filed and recorded in the office of the clerk and recorder of the county in which such lands are situated, and a certified copy thereof must be filed in the office of the clerk of the court in the county in which the proceedings for the organization of such district were instituted. The provisions of this section shall not apply to any petition provided for by this chapter, and all such petitions may be signed in any number of original parts with the same effect as though all signatures had been affixed to one instrument.

History: En. Sec. 64, Ch. 146, L. 1909; re-en. Sec. 7259, R.C.M. 1921; re-en. Sec. 7259, R.C.M. 1935; R.C.M. 1947, 89-2106; amd. Sec. 6, Ch. 326, L. 1979.

85-7-2205. Definition of irrigable land. As used in this chapter, "irrigable land" means:

(1) land that can receive irrigation water and is classified as irrigable by the district or the United States government; or

(2) land decreed as taxable acreage under 85-7-1841 through 85-7-1845.

History: En. Sec. 5, Ch. 584, L. 1989.

85-7-2206 through 85-7-2210 reserved.

85-7-2211. Irrigation ditches — duties relating to safety. An irrigation district or private person or entity owning or operating irrigation diversions, aqueducts, canals, ditches, drains, flumes, headgates, siphons, or other water conveyance structures or infrastructure shall keep these structures and infrastructure in good general repair and condition. For the purpose of protecting persons and property from injury or damage, the irrigation district, private person, or entity has no duty to:

(1) erect fences or other security measures;

(2) install grates or other protective devices where conveyed water goes underground or under a bridge or other object; or

(3) prevent access to water conveyance structures or facilities by persons or animals.

History: En. Sec. 1, Ch. 570, L. 1987; amd. Sec. 1, Ch. 305, L. 2021.

85-7-2212. Irrigation ditches — limits of liability. An irrigation district or private person or entity owning or operating irrigation diversions, aqueducts, canals, ditches, drains, flumes, headgates, siphons, or other water conveyance structures or infrastructure is not liable for:

(1) personal injury or property damage resulting from floodwaters caused by rainfall or other weather conditions or acts of nature;

(2) personal injury or property damage occurring on another's land and caused by water seepage that existed or began before the injured person first arrived on or obtained an interest in the land or before the damaged property was first placed on the land, if the seepage does not carry toxic chemicals onto the land;

(3) injury to a person or property while, without authorization of the district or private person or entity, the person or property is on land or water controlled by the district or private person or entity, unless the irrigation district or private person or entity engaged in willful or wanton misconduct; or

(4) death of a person or animal from drowning or other causes, unless the irrigation district or private person or entity was grossly negligent or engaged in willful or wanton misconduct.

History: En. Sec. 2, Ch. 570, L. 1987; amd. Sec. 2, Ch. 305, L. 2021.

Cross-References

Liability for negligence as well as willful acts, 27-1-701.

CHAPTER 8
DRAINAGE DISTRICTS

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Part 1
Creation of Districts

85-8-101. Petition for creation of district. (1) Whenever a majority of the owners of lands within any district of land who shall represent one-third in area of the land within said district to be reclaimed or benefited or whenever the owners of more than one-half of the lands within such district desire to construct one or more drains, ditches, levees, waste ditches, or other works across the lands of others or to straighten, widen, deepen, or otherwise alter any natural stream or watercourse not navigable, for the promotion of the public health or welfare and the drainage of the lands and removal of surface waters therefrom; or desire to maintain and keep in repair any such drain, ditch, or levee heretofore constructed under any law of this state, such owners may file, in the district court of any county in which the lands or any part of them shall lie, a petition setting forth:

(a) the proposed name of the drainage district;

(b) the necessity of the proposed work;

(c) a general description of the proposed starting points, routes, and termini of the proposed drain, ditches, and levees;

(d) a general description of the lands proposed to be included in the district;

(e) the names of the owners of all lands in the district, when known.

(2) If the purpose of the petitioners is the enlargement, repair, and maintenance of a ditch, levee, or other work heretofore constructed under any law of this state, the petition shall give a general description of the same, with such particulars as are considered important. The petition shall pray for the organization of a drainage district by the name and with the boundaries proposed and for the appointment of commissioners for the execution of such proposed work, according to the provisions of this and the following sections.

(3) (a) Any lands, the title to which is in the state and which are within the boundaries of any drainage district heretofore created or which may be hereafter created, may be included in any such drainage district in the same manner as is by law provided for adding other lands to drainage districts whenever it is found necessary to include lands in drainage districts as provided by the preceding subsections.

(b) All copies of petitions or notices required by law to be served on account of such lands being included in such drainage districts shall be served on the president of the board having control of such lands in the same manner as is hereinafter provided for the service of petitions and notices on other owners of lands in the district in which said lands are situated.

History: En. Sec. 1, Ch. 129, L. 1921; re-en. Sec. 7265, R.C.M. 1921; re-en. Sec. 7265, R.C.M. 1935; R.C.M. 1947, 89-2201; amd. Sec. 7, Ch. 326, L. 1979.

Cross-References

Receiving affidavits on question of petition sufficiency, 85-8-119.

85-8-102. Amendment and circulation of petition — court consideration. No petition having as many signers as are required by 85-8-101 may be declared void, but the court may at any time permit the petition to be amended in form and substance to conform to the facts, if the facts justify the organization of a drainage district. Several similar petitions for the organization of the same district may be circulated and, when filed, together shall be regarded as one petition having as many signers as there are separate signers on the several filed petitions who own lands within the proposed drainage district. All petitions for the organization of the district filed prior to the hearing on the petition shall be considered by the court the same as if filed with the first petitions placed on file, and the signatures thereon shall be counted in determining whether sufficient landowners have signed the petition.

History: En. Sec. 2, Ch. 129, L. 1921; re-en. Sec. 7266, R.C.M. 1921; re-en. Sec. 7266, R.C.M. 1935; amd. Sec. 40, Ch. 460, L. 1977; R.C.M. 1947, 89-2203; amd. Sec. 8, Ch. 326, L. 1979.

85-8-103. Territory to be included. Said territory need not be contiguous, provided that it be so situated that the public health or welfare will be promoted by such drainage of each part thereof, the benefits of the proposed work in each part will exceed the damages from the costs of said proposed work in each part, and the court shall be satisfied that said proposed work can be more cheaply done if in a single district than otherwise.

History: En. Sec. 3, Ch. 129, L. 1921; re-en. Sec. 7267, R.C.M. 1921; re-en. Sec. 7267, R.C.M. 1935; R.C.M. 1947, 89-2204.

85-8-104 through 85-8-110 reserved.

85-8-111. Notice of hearing. (1) On the filing of a petition under 85-8-101, the court or judge shall make an order fixing a time and place of hearing on the petition and ordering notice. The clerk of court for the county in which the proceedings are instituted shall cause 20 days' notice of the filing of the petition to be given:

(a) by posting notice in at least five of the most public places in the proposed district in which the work is to be done;

(b) by serving or causing to be served a copy of the notice on each owner of land within the proposed district residing in any county in which any lands in the proposed district are situated, either personally or by leaving a copy of the notice at the owner's last usual place of residence with a person of suitable age and discretion, to whom its contents must be explained; and

(c) by publishing a copy at least once a week for 3 successive weeks in some newspaper published in each county from which any part of the district is proposed to be taken. If there is no newspaper in any county, the notice may be published in a newspaper published in an adjoining county.

(2) The notice must:

(a) state in what court the petition is filed;

(b) state briefly the starting points, routes, and termini of drains, ditches, and levees;

(c) give a general description of the proposed work;

(d) give the proposed boundaries of the district or a general description of all the lands in the proposed district;

(e) give the name proposed for the drainage district; and

(f) state the time and place fixed by the court when and where the petitioners will request a hearing on the petition.

History: En. Sec. 4, Ch. 129, L. 1921; re-en. Sec. 7268, R.C.M. 1921; re-en. Sec. 7268, R.C.M. 1935; R.C.M. 1947, 89-2205; amd. Sec. 2802, Ch. 56, L. 2009.

85-8-112. Affidavit in case of nonresident petitioners. If any of the owners of land in said district are nonresidents of the county or counties in which the proposed district lies, the petition shall be accompanied by an affidavit giving the names and post-office addresses of such nonresidents, if such are known, and if unknown, shall state that upon diligent inquiry their names or post-office addresses (whichever may be the fact) cannot be ascertained. The clerk of the court shall mail a copy of the notice aforesaid to each of said nonresident owners whose post-office address is known, within 6 days after the first publication of the same.

History: En. Sec. 5, Ch. 129, L. 1921; re-en. Sec. 7269, R.C.M. 1921; re-en. Sec. 7269, R.C.M. 1935; R.C.M. 1947, 89-2206.

85-8-113. Proof of service and publication. The certificate of the clerk of the court or other public officer or the affidavit of any other person who knows the facts, affixed to a copy of said notice, shall be sufficient evidence of the posting, serving, mailing, or publication thereof.

History: En. Sec. 6, Ch. 129, L. 1921; re-en. Sec. 7270, R.C.M. 1921; re-en. Sec. 7270, R.C.M. 1935; R.C.M. 1947, 89-2207.

85-8-114. Personal service of notice to confer jurisdiction. Personal service of such notice on (or service by leaving at the last usual place of abode of) all owners of lands or easements or interest in lands within said district shall give the court complete jurisdiction, without posting, publication, or mailing of said notice.

History: En. Sec. 7, Ch. 129, L. 1921; re-en. Sec. 7271, R.C.M. 1921; re-en. Sec. 7271, R.C.M. 1935; R.C.M. 1947, 89-2208.

85-8-115. Insufficient service. (1) If it is found, before the hearing on a petition for the organization of a drainage district, that one or more owners of land in the proposed district have not been served with notice of hearing on the petition, the court or presiding judge does not lose jurisdiction. The court or presiding judge in that case shall adjourn the hearing, make an order directing the serving of the notice upon the landowner or landowners, and fix the time and manner of service of the notice, which must notify the landowner or landowners to appear at the adjourned time and place and be heard on the petition.

(2) The notice must be served personally or by leaving the notice at the last usual place of residence of the unserved owners as provided in 85-8-111, not less than 8 days before the adjourned hearing, or must be published, not less than 14 days before the adjourned hearing, in some newspaper published in the county in which the owners' lands lie or, if a newspaper is not published in that county, then in some newspaper published in an adjoining county.

History: En. Secs. 8, 9, Ch. 129, L. 1921; re-en. Secs. 7272, 7273, R.C.M. 1921; re-en. Secs. 7272, 7273, R.C.M. 1935; R.C.M. 1947, 89-2209, 89-2210; amd. Sec. 2803, Ch. 56, L. 2009.

85-8-116. Procedure on adjourned day. Upon the adjourned day the same proceedings, adjournments, trial findings, and orders may be had as in case of complete service of notice in the first instance. In case of failure to mail said notice as herein required, the court or judge may order the same mailed later and shall adjourn said hearing so that said notice shall be mailed at least 14 days before said adjourned hearing. In case of failure to publish or post notice as required in this part, the court or judge may adjourn said hearing for sufficient time to permit the due posting and publication of said notice and order said notice posted or published as directed in 85-8-111. In case of adjournment to permit notice to be given, the notice shall state the fact of such adjournment and the time and place of hearing pursuant to said adjournment.

History: En. Sec. 10, Ch. 129, L. 1921; re-en. Sec. 7274, R.C.M. 1921; re-en. Sec. 7274, R.C.M. 1935; R.C.M. 1947, 89-2211.

85-8-117. Contest by landowners. (1) On the day fixed for hearing on such petition, all parties owning lands or any interest or easement in land within said proposed district or who would be affected thereby may appear and contest:

(a) the sufficiency of the petition;
(b) the sufficiency of the signers of the petition;
(c) the sufficiency of the notice;
(d) the constitutionality of the law; and
(e) the jurisdiction of the court, specifying their objections to such jurisdiction.

(2) The petitioners and contestants may, on the trial, offer any competent evidence in regard thereto. All notices of contest shall be in writing and shall clearly specify the grounds of contest.

History: En. Sec. 11, Ch. 129, L. 1921; re-en. Sec. 7275, R.C.M. 1921; re-en. Sec. 7275, R.C.M. 1935; R.C.M. 1947, 89-2212.

85-8-118. Determination of sufficiency of petition. The court shall hear and determine whether or not the petition contains the signatures of a majority of the owners of lands within the proposed district who are of lawful age and who represent one-third in area of the lands proposed to be affected by said work or the signatures of the owners of more than one-half of such lands and shall determine all questions of law arising on said contest. The district court in which such petition shall be filed or the judge thereof may adjourn the hearing on the petition from time to time for want of sufficient notice, to give time to prepare for trial, or for other good cause.

History: En. Sec. 12, Ch. 129, L. 1921; re-en. Sec. 7276, R.C.M. 1921; re-en. Sec. 7276, R.C.M. 1935; R.C.M. 1947, 89-2213; amd. Sec. 9, Ch. 326, L. 1979.

85-8-119. Receiving affidavits on question of petition sufficiency. The affidavits of any 10 or more of the signers of the petition, stating that they have examined the petition and are acquainted with the locality of the district and that the petition is signed by a sufficient number of owners of lands in the district to satisfy 85-8-101, may be taken by the court or judge as prima facie evidence of the facts stated in the petition. The affidavit of any petitioner or other landowner before the court or represented before the court asserting the petitioner's or landowner's ownership of lands in the district, properly described, is sufficient evidence to the court of those facts.

History: En. Sec. 13, Ch. 129, L. 1921; re-en. Sec. 7277, R.C.M. 1921; re-en. Sec. 7277, R.C.M. 1935; R.C.M. 1947, 89-2214; amd. Sec. 10, Ch. 326, L. 1979; amd. Sec. 2804, Ch. 56, L. 2009.

85-8-120. Fraudulent deeds. All deeds made for the purpose of establishing or defeating the prayer of said petition and not made in good faith and for a valuable consideration shall be taken and held to be a fraud, and the holders thereof shall not be considered as the owners of the lands described therein.

History: En. Sec. 14, Ch. 129, L. 1921; re-en. Sec. 7278, R.C.M. 1921; re-en. Sec. 7278, R.C.M. 1935; R.C.M. 1947, 89-2215.

Cross-References

Fraud, 28-2-404 through 28-2-406.

85-8-121. Court determination. (1) If the court or presiding judge, after hearing any and all competent evidence that may be offered for and against the petition for the creation of the district, finds that the petition has not been signed as required in this part, the petition must be dismissed at the cost of the petitioners and judgment must be entered against the petitioners for the amount of the costs.

(2) If it appears that the petition has been signed as required in this part, the court or judge shall so find and order any necessary amendments to the petition, shall divide the district into three divisions, as nearly equal in area as possible, and shall appoint three suitable and competent persons as commissioners and fix their temporary bonds. One commissioner must be appointed from each division, and each person appointed must be an actual landowner and resident of the county or counties in the division for which the person is appointed. If the district is situated in two or more counties, not more than two of the commissioners may reside in one of the counties. Ownership of land within the district may not disqualify a person from acting as a commissioner.

History: (1)En. Sec. 15, Ch. 129, L. 1921; re-en. Sec. 7279, R.C.M. 1921; re-en. Sec. 7279, R.C.M. 1935; Sec. 89-2216, R.C.M. 1947; (2)En. Sec. 16, Ch. 129, L. 1921; re-en. Sec. 7280, R.C.M. 1921; amd. Sec. 1, Ch. 50, L. 1925; re-en. Sec. 7280, R.C.M. 1935; Sec. 89-2217, R.C.M. 1947; R.C.M. 1947, 89-2216, 89-2217(part); amd. Sec. 2805, Ch. 56, L. 2009.

Part 2
Dissolution of Districts

85-8-201. Dissolution of districts. Whenever the owners of more than one-half of the lands within any drainage district organized under the provisions of this chapter shall present to the district court having jurisdiction of the drainage district a petition signed by them, praying that such drainage district be dissolved, the judge of the court shall cause notice of such petition, together with a copy of the petition, to be served upon the commissioners of the district, directing them to show cause on a day certain, not less than 15 or more than 30 days from the date of the filing of the petition, why the petition should not be granted. The judge, at the time of receiving the petition, shall make an order forbidding the commissioners from incurring any further expense or proceeding with the work of constructing a drain. On the day of hearing the court shall hear the same, and if it appears that the owners of more than one-half of the lands in the drainage district have signed the petition, it shall be granted. Thereupon, the court shall make an order directing the commissioners to file a written report, under oath, setting forth the amount of the debts and obligations of the drainage district. Within 30 days after such report is filed, the court shall cause an assessment to be levied against all lands in the district on the basis of the final report of the commissioners, as confirmed by the court, and if no final report has been made, then on an area basis. The court shall also enter judgment dissolving the district and authorize the commissioners to settle the business of the district on the basis of the final report of the commissioners or on the area basis as confirmed by this court, the commissioners to render their services for same without pay.

History: En. Sec. 7265-A by Sec. 1, Ch. 46, L. 1925; re-en. Sec. 7265.1, R.C.M. 1935; R.C.M. 1947, 89-2202; amd. Sec. 11, Ch. 326, L. 1979.

Part 3
Organization and Operation

85-8-301. Term of commissioners at creation of district. On the creation of a district the commissioners appointed by the judge or court shall hold office until the first Tuesday in May following their appointment and until their successors are elected. When a district is in existence on March 1, 1921, and thereafter an order is made dividing such district into divisions, the terms of office of such commissioners shall cease with the Monday immediately preceding the first Tuesday in May next following.

History: En. Sec. 18, Ch. 129, L. 1921; re-en. Sec. 7282, R.C.M. 1921; amd. Sec. 2, Ch. 50, L. 1925; re-en. Sec. 7282, R.C.M. 1935; R.C.M. 1947, 89-2301.

85-8-302. Election of commissioners — regular term of office. (1) Except as provided in 13-1-502(4), the election of commissioners must be held annually and conducted in accordance with Title 13, chapter 1, part 5. The term of office of commissioners shall commence on the day of their election.

(2) (a) At the first primary or general election following the organization of a district and in districts organized and in existence on March 1, 1921, and that, on petition, have been divided into divisions, three commissioners must be elected, with one commissioner being elected from each division.

(b) A commissioner must be an actual landowner in the division in which the commissioner is elected.

(c) One of the commissioners, to be determined by lot, shall hold office for 1 year; another of the commissioners, to be determined by lot, shall hold office for 2 years; and the third commissioner shall hold office for 3 years.

(3) After the election of the initial commissioners, one commissioner must be elected each year. Commissioners elected after the initial election shall hold office for a term of 3 years. The person elected as a commissioner in each year to succeed the commissioner whose term is then expiring must be elected as a commissioner from the same division as the commissioner whose term expires.

(4) Each commissioner must be a resident of a county where a portion of the district lands is situated.

History: En. Sec. 19, Ch. 129, L. 1921; re-en. Sec. 7283, R.C.M. 1921; amd. Sec. 3, Ch. 50, L. 1925; re-en. Sec. 7283, R.C.M. 1935; amd. Sec. 41, Ch. 460, L. 1977; R.C.M. 1947, 89-2302; amd. Sec. 400, Ch. 571, L. 1979; amd. Sec. 11, Ch. 27, L. 1981; amd. Sec. 1, Ch. 349, L. 2003; amd. Sec. 251, Ch. 49, L. 2015.

Cross-References

Residence — rules for determining, 1-1-215.

85-8-303. Repealed. Sec. 15, Ch. 27, L. 1981.

History: En. Sec. 7283A by Sec. 4, Ch. 50, L. 1925; re-en. Sec. 7283.1, R.C.M. 1935; R.C.M. 1947, 89-2303; amd. Sec. 401, Ch. 571, L. 1979.

85-8-304. Results of election. The secretary of the board of commissioners shall enter the result of the election in the minutes of the board and file with the clerk of the district court creating the district a statement showing the names of the persons elected as commissioners, the names of the commissioners whose term will expire on the first Tuesday in May following, and the names of all of the persons who will compose the board of commissioners for the year next following the first Tuesday in May.

History: En. Sec. 7283B by Sec. 4, Ch. 50, L. 1925; re-en. Sec. 7283.2, R.C.M. 1935; R.C.M. 1947, 89-2304; amd. Sec. 1, Ch. 171, L. 1979; amd. Sec. 402, Ch. 571, L. 1979; amd. Sec. 12, Ch. 27, L. 1981.

Cross-References

Assessments on improvements — taxpayers' approval, limitations, and election procedures, 85-8-624.

85-8-305. Qualifications of electors. (1) At all such elections, except as herein otherwise expressly provided, the following persons holding title or evidence of title to lands within the district shall be entitled to vote:

(a) all of the persons having the qualifications of electors under the constitution and general laws of the state;

(b) guardians, administrators, executors, and trustees residing in the state;

(c) domestic corporations by their duly authorized agents.

(2) In all elections each elector shall be permitted to cast one vote for each 40 acres of land or major fraction thereof in the district owned by such elector, but any elector owning 20 acres or less shall be entitled to one vote.

History: En. Sec. 7283C by Sec. 4, Ch. 50, L. 1925; re-en. Sec. 7283.3, R.C.M. 1935; R.C.M. 1947, 89-2305.

85-8-306. Commissioner candidate filing. A person eligible to vote in the district may file a declaration of candidacy for the office of commissioner within the time period specified in 13-1-502. If a write-in candidate has filed pursuant to 13-1-502, the elector may write on the ballots the name or names of the persons for whom they desire to vote.

History: En. Sec. 7283D by Sec. 4, Ch. 50, L. 1925; re-en. Sec. 7283.4, R.C.M. 1935; R.C.M. 1947, 89-2306; amd. Sec. 403, Ch. 571, L. 1979; amd. Sec. 13, Ch. 27, L. 1981; amd. Sec. 41, Ch. 250, L. 1985; amd. Sec. 252, Ch. 49, L. 2015.

85-8-307. Vacancies. If a vacancy occurs on the board of commissioners, the remaining members of the board shall elect some qualified elector to fill the vacancy, and the person elected holds office for the unexpired term and until a successor is elected and qualified. The person appointed must be appointed as a commissioner for the division in which the vacancy exists. If there is a vacancy or vacancies on the board of commissioners by reason of no appointment being made, due to the failure of the remaining members of the board to act or on account of no election being held, the judge of the court having jurisdiction over the drainage district shall, upon the receipt of a petition signed by 10% of the resident owners of land in the district, appoint to the vacancy or vacancies the person that the petition may designate.

History: En. Sec. 20, Ch. 129, L. 1921; re-en. Sec. 7284, R.C.M. 1921; amd. Sec. 5, Ch. 50, L. 1925; amd. Sec. 1, Ch. 169, L. 1929; re-en. Sec. 7284, R.C.M. 1935; R.C.M. 1947, 89-2307; amd. Sec. 2806, Ch. 56, L. 2009.

85-8-308. Oath and bond of commissioners — quorum. (1) Before entering upon their duties, the commissioners shall:

(a) take and subscribe an oath to support The Constitution of the United States and The Constitution of the State of Montana, to faithfully and impartially discharge their duties as commissioners, and to render a true account of their doings to the court by which they are appointed whenever required by law or the order of the court; and

(b) execute a bond running to the clerk of court and the clerk's successors in office as obligees, to be filed with the clerk for the benefit of the parties interested, in an amount to be fixed by the court or presiding judge and with sureties to be approved by the court or presiding judge, conditioned for the faithful discharge of their duties as commissioners and the faithful accounting for and application of all money that comes into their hands as commissioners.

(2) A majority shall constitute a quorum, and a concurrence of a majority in any matter within their duties is sufficient to its determination.

History: En. Sec. 17, Ch. 129, L. 1921; re-en. Sec. 7281, R.C.M. 1921; re-en. Sec. 7281, R.C.M. 1935; R.C.M. 1947, 89-2218; amd. Sec. 2807, Ch. 56, L. 2009.

Cross-References

Oaths, Title 1, ch. 6.

Bonds of county officers and employees, Title 2, ch. 9, part 7.

85-8-309 and 85-8-310 reserved.

85-8-311. Record and vouchers. The commissioners shall keep an accurate record of all moneys collected on account of the work under their charge and of all payments made by them; shall take vouchers for such payments; and shall keep full, accurate, and true minutes of all their proceedings.

History: En. Sec. 21, Ch. 129, L. 1921; re-en. Sec. 7285, R.C.M. 1921; re-en. Sec. 7285, R.C.M. 1935; R.C.M. 1947, 89-2308.

85-8-312. Custody of funds. The county treasurer of the county in which the court having jurisdiction of the district is located is the custodian of all funds belonging to the district, and the treasurer shall pay out the funds upon warrants drawn by the board of commissioners of the district, except that the bonds of the district and the interest coupons on the bonds are payable as they mature on presentation to the treasurer.

History: En. Sec. 22, Ch. 129, L. 1921; re-en. Sec. 7286, R.C.M. 1921; re-en. Sec. 7286, R.C.M. 1935; R.C.M. 1947, 89-2309; amd. Sec. 2808, Ch. 56, L. 2009.

Cross-References

Office of County Treasurer, Title 7, ch. 6, part 21.

85-8-313. Annual report of commissioners. On the first Tuesday of July of each year the commissioners shall file in the office of the clerk of the court having jurisdiction in the matter an itemized statement of all their receipts and disbursements and leave said report in such office for examination by parties interested at all times.

History: En. Sec. 23, Ch. 129, L. 1921; re-en. Sec. 7287, R.C.M. 1921; re-en. Sec. 7287, R.C.M. 1935; R.C.M. 1947, 89-2310.

85-8-314. Court control and compensation of commissioners. (1) The commissioners must receive for their services compensation that the court or presiding judge may determine. They must also receive their actual reasonable expenses. They are at all times under the control or direction of the court or presiding judge and shall obey the court's or judge's directions, and for failure to do so, they shall forfeit their compensation and be dealt with summarily as for contempt. Suit may also be brought upon their bonds, in the name of the clerk of the court, and the amount recovered must be applied to the construction of the work or to the party injured as justice may require.

(2) The court may at any time require the commissioners to make a report on any matter or matters connected with their duties as commissioners and after hearing may remove from office any or all of the commissioners for neglect of duty, for malfeasance in office, or for other good cause. The court may at any time require the commissioners to give new bonds to the clerk

of court and may fix the amount of the bonds. The bonds must be submitted to the court or the presiding judge for approval.

History: (1)En. Secs. 24, 25, 26, Ch. 129, L. 1921; re-en. Secs. 7288, 7289, 7290, R.C.M. 1921; re-en. Secs. 7288, 7289, 7290, R.C.M. 1935; Secs. 89-2311, 89-2312, 89-2313, R.C.M. 1947; (2)En. Sec. 92, Ch. 129, L. 1921; re-en. Sec. 7356, R.C.M. 1921; re-en. Sec. 7356, R.C.M. 1935; Sec. 89-2812, R.C.M. 1947; R.C.M. 1947, 89-2311, 89-2312, 89-2313, 89-2812; amd. Sec. 2809, Ch. 56, L. 2009.

85-8-315. Presumption of regularity of commissioners' acts. Commissioners of drainage districts are hereby declared to be public officers. The presumption shall be in favor of the regularity and validity of all their official acts. Whenever any report of the commissioners of any drainage district or any part of any such report is contested, remonstrated against, or called in question, the burden of proof shall rest upon the contestant, remonstrant, or questioner.

History: En. Sec. 95, Ch. 129, L. 1921; re-en. Sec. 7359, R.C.M. 1921; re-en. Sec. 7359, R.C.M. 1935; R.C.M. 1947, 89-2815.

85-8-316 through 85-8-320 reserved.

85-8-321. Organization, appointments, and preliminary report. (1) Within 10 days after the commissioners are appointed and qualified, they shall meet and organize by electing one member as president and by electing a secretary, who may or may not be a member of the board.

(2) The commissioners shall appoint one or more attorneys to assist in the establishment of the district, advise with its officers, agents, and employees, and prepare reports and other necessary documents. The court shall allow the attorney or attorneys just compensation to be taxed in the case.

(3) The commissioners shall appoint a competent civil and drainage engineer, who may be an individual, a partnership, or a corporation, who may employ assistants and make surveys, and who, with the approval of the court, may employ a consulting engineer or secure expert advice. The expense of the engineer, the engineer's assistants, and the consulting engineer must be taxed as expenses under the petition. The commissioners shall personally examine the lands in the district and make a preliminary report to the court that states:

(a) whether the proposed work is necessary or would be of use in carrying out the purposes of the petition;

(b) whether the proposed work would promote the public health;

(c) whether the proposed work would promote the public welfare;

(d) whether the total benefits from the proposed work will exceed the cost of the work, together with the damages resulting from the work, and in arriving at this, they shall include all benefits and all damages resulting from the work both within and outside of the district.

(4) The commissioners shall in the report fix, as near as may be, and report to the court the boundaries of the proposed drainage district. The boundaries may not be changed from those in the petition described so as to deprive the court of jurisdiction by reason of not having on the petition the required number of signers owning land within the changed boundaries.

History: En. Sec. 27, Ch. 129, L. 1921; re-en. Sec. 7291, R.C.M. 1921; re-en. Sec. 7291, R.C.M. 1935; R.C.M. 1947, 89-2314; amd. Sec. 2810, Ch. 56, L. 2009.

85-8-322. Adoption of feasible plan. If said proposed work, as described in the petition, is not best suited to carry out the purposes of the petition, the commissioners shall consider and base their report upon the one best suited to carry out those purposes and propose to the court the one considered by them.

History: En. Sec. 28, Ch. 129, L. 1921; re-en. Sec. 7292, R.C.M. 1921; re-en. Sec. 7292, R.C.M. 1935; R.C.M. 1947, 89-2315.

85-8-323. Hearing and notice on preliminary report. Upon the filing of the preliminary report the court or the presiding judge thereof shall by order fix a time and place when and where the same shall be heard at some general or special term of said court, not less than 30 days from the filing of said report. Notice of the time and place of hearing upon said preliminary report shall be given to all interested persons by publishing a brief notice of the filing of said report, including a brief statement of the substance of said report, in one or more newspapers published in each county in which any land in said proposed drainage district shall be situated (or, if no newspaper is published in said county, in one or more newspapers in an adjoining county) once in each week for 3 successive weeks prior to the day appointed for hearing thereon. Said notice shall:

(1) describe all lands included by said report in said district which were not included therein by the petition and state that such lands are to be included in said district; and

(2) describe all lands excluded from said district which were by the petition included therein and shall state that such lands are to be excluded from said district.

History: En. Sec. 29, Ch. 129, L. 1921; re-en. Sec. 7293, R.C.M. 1921; re-en. Sec. 7293, R.C.M. 1935; R.C.M. 1947, 89-2316.

85-8-324. Adjournment of hearing or trial of issues. Upon the day fixed for hearing upon said report, said court may adjourn said hearing for good cause or may proceed to hear, try, and determine all issues arising upon said report.

History: En. Sec. 30, Ch. 129, L. 1921; re-en. Sec. 7294, R.C.M. 1921; re-en. Sec. 7294, R.C.M. 1935; R.C.M. 1947, 89-2317.

85-8-325. Remonstrance by interested parties. Any interested party may appear and remonstrate against said report or any material part thereof. All remonstrances shall be in writing, be verified on oath, be filed at least 5 days before the day fixed for hearing, and shall set forth the facts upon which they are based.

History: En. Sec. 31, Ch. 129, L. 1921; re-en. Sec. 7295, R.C.M. 1921; re-en. Sec. 7295, R.C.M. 1935; R.C.M. 1947, 89-2318.

85-8-326. Service of owners of added lands. When lands are added to the district, the owners thereof shall be served with said notice as provided for serving of notice of hearing on the petition.

History: En. Sec. 32, Ch. 129, L. 1921; re-en. Sec. 7296, R.C.M. 1921; re-en. Sec. 7296, R.C.M. 1935; R.C.M. 1947, 89-2319.

85-8-327. Procedure at court hearing and order. (1) All issues arising upon said preliminary report shall be tried by the court without a jury.

(2) If the court shall find in favor of the remonstrance or if said report be that the proposed work will not promote the public health and will not promote the public welfare or that the benefits from said proposed work will not exceed the damages and cost of construction and no remonstrance against said report is filed, the petition shall be dismissed, the costs taxed against the petitioners, and judgment entered therefor, as provided in 85-8-350.

(3) If the preliminary report be that the benefits of said proposed work (or work proposed by the commissioners) will exceed the damages and the cost of construction and that the public health will be promoted thereby or that the public welfare will be promoted thereby and no remonstrance thereto is filed or if on the trial of the issues made on said report the court finds that the benefits will exceed the damages and cost of construction and that the public health or the public welfare will be promoted by said proposed work, the court shall make and file such findings in writing and make an order confirming said report or directing amendment of the report to conform to the findings of said court, and when so amended the court shall by order confirm the same and direct said commissioners to proceed with said work with all convenient speed.

(4) Such findings and order shall be final and conclusive unless appealed from to the supreme court within 30 days after filing thereof.

History: En. Secs. 33, 34, 35, Ch. 129, L. 1921; re-en. Secs. 7297, 7298, 7299, R.C.M. 1921; re-en. Secs. 7297, 7298, 7299, R.C.M. 1935; R.C.M. 1947, 89-2320, 89-2321, 89-2322.

Cross-References

Judgment on dismissal of proceedings — assessment of costs, 85-8-350.

85-8-328. Corporate nature of drainage district. (1) Upon entering of such order of confirmation of said preliminary report of record, such drainage district shall be and is thereby declared to be organized as a drainage district, by the name mentioned in said petition or such other name as the court shall fix, with the boundaries fixed by the order confirming the report of said commissioners, to be a body corporate, by said name fixed in said order, with the right to sue and be sued, to adopt and use a seal, and to have perpetual succession.

(2) The commissioners appointed as aforesaid and their successors in office shall, from the entry of such order of confirmation, constitute the corporate authority of said drainage district, exercise the functions conferred on them by law, and do all things and perform all acts necessary to the construction and preservation of the proposed work.

History: **En. Secs. 36, 37, Ch. 129, L. 1921; re-en. Secs. 7300, 7301, R.C.M. 1921; re-en. Secs. 7300, 7301, R.C.M. 1935; R.C.M. 1947, 89-2323, 89-2324.**

85-8-329. Necessity of preliminary proceedings. All proceedings herein required, prior to the entry of such order of confirmation of record, shall be deemed to be and are hereby declared to be necessary to the formation of said body corporate.

History: **En. Sec. 38, Ch. 129, L. 1921; re-en. Sec. 7302, R.C.M. 1921; re-en. Sec. 7302, R.C.M. 1935; R.C.M. 1947, 89-2325.**

85-8-330 through 85-8-340 reserved.

85-8-341. Preparation of report — contents. (1) As soon as may be after the confirmation of the preliminary report or within such time as the court may direct, said commissioners shall proceed to have all necessary levels taken and surveys made and shall lay out said proposed work; make a map thereof and plans, profiles, and other specifications thereof; and report in writing to the court:

(a) whether the starting points, routes, and termini of the proposed work and the proposed location thereof as contained in the petition are in all respects proper and feasible and, if not, shall report such as are most proper and feasible;

(b) if it be found necessary to change the boundaries of said proposed district, as fixed by them previously, they shall report said proposed change and, if possible, shall report the names, residence, and post-office addresses of the owner or owners of all lands affected by said change in boundaries, but no such change in boundaries shall be made as to deprive the court of jurisdiction; provided, however, that if the owners of lands adjacent to the district petition to have their lands brought into the district such may be considered the same as original petitioners in making changes of boundaries;

(c) what lands within the district, as reported by them, will be injured by the proposed work, if any, and they shall therein award to each tract, lot, easement, or interest, by whomsoever held, the amount of damages which they shall determine will be caused to the same by the proposed work;

(d) what lands (including improvements when improvements receive benefits), easements, irrigation ditches, cities, towns, counties, individuals, and other corporations and persons should be assessed for the payment of any part of the cost of constructing the proposed drains, levees, or other facilities, repairs thereto, maintenance thereof, and the incidental expenses attached to the establishment of such drainage district;

(e) the total amount, as near as they can determine, that said proposed work will cost, which cost shall include all incidental expenses, the reasonable cost of organizing said district, the costs of proceeding and all probable damage to lands, both within and without the district, together with a reasonable attorney fee for the petitioners, which cost will hereinafter be referred to as cost of construction.

(2) If the cost of construction of any particular part of the work so proposed to be done should be assessed upon any particular tract or tracts, lot or lots of land, including improvements where the same are benefited or upon any corporation or corporations, the commissioners shall so specify, and in their report they shall fix and determine the sums which should be assessed against said tracts, lots, and corporations and assess such sum against said tracts, lots, and corporations.

(3) If any individual, association of individuals, or corporation would, in the judgment of said commissioners, derive special benefits from the whole or any part of such proposed work, the commissioners shall so report and assess those benefits and assess against the recipient thereof its proportionate share of the costs of said proposed work. The word "corporation", whenever contained in this chapter, shall be construed to include:

(a) railroad companies;
(b) other private and quasi-public corporations of all kinds;
(c) towns;
(d) cities;
(e) villages;
(f) other drainage districts; and
(g) counties.

(4) They shall apportion and assess the part of this cost of construction, not assessed as above, against the several benefited tracts, lots (including improvements when the same are benefited), and easements in said drainage district, in proportion to the benefits which they have assessed against the same, by setting down opposite each tract, lot, or easement the sum which they assess against the same for construction. The assessments which together make up the cost of construction, as above defined, are herein referred to as assessments for construction.

(5) The commissioners shall further report to the court the probable cost of keeping said proposed work in repair after it is completed.

(6) They shall include in their report said map, plans, and other specifications and file the same with their report.

History: (1)(a) thru (1)(c)En. Secs. 39, 40, 41, 42, Ch. 129, L. 1921; re-en. Secs. 7303, 7304, 7305, 7306, R.C.M. 1921; re-en. Secs. 7303, 7304, 7305, 7306, R.C.M. 1935; Secs. 89-2326, 89-2327, 89-2328, 89-2329, R.C.M. 1947; (1)(d)En. Sec. 43, Ch. 129, L. 1921; re-en. Sec. 7307, R.C.M. 1921; amd. Sec. 2, Ch. 169, L. 1929; re-en. Sec. 7307, R.C.M. 1935; amd. Sec. 1, Ch. 409, L. 1973; Sec. 89-2330, R.C.M. 1947; (1)(e)En. Sec. 44, Ch. 129, L. 1921; re-en. Sec. 7308, R.C.M. 1921; re-en. Sec. 7308, R.C.M. 1935; Sec. 89-2331, R.C.M. 1947; (2)En. Sec. 45, Ch. 129, L. 1921; re-en. Sec. 7309, R.C.M. 1921; re-en. Sec. 7309, R.C.M. 1935; amd. Sec. 2, Ch. 409, L. 1973; Sec. 89-2332, R.C.M. 1947; (3)En. Sec. 46, Ch. 129, L. 1921; re-en. Sec. 7310, R.C.M. 1921; re-en. Sec. 7310, R.C.M. 1935; amd. Sec. 3, Ch. 409, L. 1973; Sec. 89-2333, R.C.M. 1947; (4)En. Sec. 47, Ch. 129, L. 1921; re-en. Sec. 7311, R.C.M. 1921; re-en. Sec. 7311, R.C.M. 1935; amd. Sec. 4, Ch. 409, L. 1973; Sec. 89-2334, R.C.M. 1947; (5)En. Sec. 48, Ch. 129, L. 1921; re-en. Sec. 7312, R.C.M. 1921; re-en. Sec. 7312, R.C.M. 1935; Sec. 89-2335, R.C.M. 1947; (6)En. Sec. 49, Ch. 129, L. 1921; re-en. Sec. 7313, R.C.M. 1921; re-en. Sec. 7313, R.C.M. 1935; Sec. 89-2336, R.C.M. 1947; R.C.M. 1947, 89-2326, 89-2327, 89-2328, 89-2329, 89-2330(part), 89-2331, 89-2332, 89-2333, 89-2334, 89-2335, 89-2336.

85-8-342. Apportionment of costs. (1) In apportioning the costs and expenses mentioned in 85-8-341(1)(d), the following classes of property, persons, corporations, and municipalities shall be assessed:

(a) all lands which are swampy, bogged, or waterlogged and will be relieved and improved by virtue of the construction of the proposed drainage system;

(b) all lands which are becoming or are liable to become swampy, bogged, or waterlogged and which the construction of the proposed drainage system will prevent from being thus affected;

(c) all lands from which surface or seepage waters will enter or can be conducted into the proposed drainage system;

(d) all lands and improvements thereto upon which or through which surface or seepage water will be prevented from flowing or can be prevented from flowing by virtue of the construction of the proposed drainage system;

(e) all lands or improvements which will sustain any direct benefit of any kind or character whatsoever;

(f) all railways, whether operated by steam, electricity, or otherwise, whose right-of-way or roadbed will be benefited or can be benefited by reason of the construction of the proposed drainage system or levee project;

(g) all public utilities whose easements or other facilities within the district will receive benefit from the proposed work;

(h) all owners of irrigation ditches or canals included within said district or from which water seeps, drains, or wastes to, upon, or through lands included within the district;

(i) the county or counties which the proposed drainage system traverses or which will be benefited as to public health, convenience, welfare, or improvement of any public highway;

(j) all incorporated cities or towns and lands included within townsites and subdivisions, in whole or in part, directly benefited by reason of the construction of the proposed drainage system.

(2) In apportioning the costs and expenses mentioned in 85-8-341(1)(d), the following principles shall be regarded:

(a) All of the above classes of lands, improvements, railways, public utilities, irrigation ditches, counties, cities, towns, townsites, and subdivisions shall be liable to assessment for the construction of the proposed drainage system in such proportions as may seem just and equitable.

(b) The benefits to accrue from the construction of the proposed drainage system to a railway, county, incorporated city or town, and lands included within a platted townsite or subdivision being of a different character than those to accrue to agricultural lands shall be considered in apportioning the assessment, and also the damages and inconvenience caused by seepage and waste waters from irrigation ditches and from the higher lands shall be considered in apportioning the assessment to them.

(c) In the case of the construction of levees or other flood control facilities, lands and improvements which are located or constructed at an elevation which is greater than the elevation of the design flood level which said levees or other flood control facilities are designed to protect against shall not be assessed for the payment of any part of the cost of constructing the levees or other flood control facilities, nor shall such lands or improvements be assessed for the payment of any part of the cost for repairs thereto, maintenance thereof, or the incidental expenses attached to the establishment of such drainage district.

(d) The assessment against each tract, lot, easement, town, city, county, irrigation ditch, railroad, public utility, individual, or corporation owner thereof which will be benefited by the proposed work or which, in any manner, contributes to the swamped, seeped, bogged, or waterlogged condition of any land within said district and the proportionate share of cost of construction of the proposed drainage system which each of them should bear shall be shown in tabular form, the columns of which shall be headed as follows: Column 1—Owners of property assessed; 2—Description of property assessed; 3—Number of acres assessed; 4—Amount of benefits assessed; 5—Number of acres taken for right-of-way; 6—Value of property taken; 7—Damages; 8—Assessment for costs; which shall be known as the assessment roll. Where property, persons, or corporations, public or private, contribute to the damaged condition of the lands to be reclaimed, it shall not be necessary to assess in such assessment roll the benefits to be derived by or accruing to them.

History: En. Sec. 43, Ch. 129, L. 1921; re-en. Sec. 7307, R.C.M. 1921; amd. Sec. 2, Ch. 169, L. 1929; re-en. Sec. 7307, R.C.M. 1935; amd. Sec. 1, Ch. 409, L. 1973; R.C.M. 1947, 89-2330(part).

Cross-References

Procedure to levy additional assessments, 85-8-615.

85-8-343. Commissioners to use most feasible plan. The commissioners shall not be confined to the points of commencement, routes, or termini of the drains or ditches or the number, extent, or size of the same or the location, plan, or extent of any levee, ditch, or other work as proposed by the petitioners but shall locate, design, lay out, and plan the same in such manner as to them shall seem best to promote the public health or welfare and to drain or to protect the lands, including improvements, of the parties interested with the least damage and the greatest benefit to all lands affected thereby. Any plan proposed by the commissioners may, on the application of any interested person, on the hearing provided for hereinafter, or on the application of the commissioners, be altered by the court, by written order, in such manner as shall appear to the court to be just.

History: En. Sec. 50, Ch. 129, L. 1921; re-en. Sec. 7314, R.C.M. 1921; re-en. Sec. 7314, R.C.M. 1935; amd. Sec. 5, Ch. 409, L. 1973; R.C.M. 1947, 89-2337.

85-8-344. Alteration of boundaries. If the commissioners find that the proposed district, as described in the filed petition, will not embrace all of the lands, including improvements, that will be benefited by the proposed work or that it will include lands that will not be benefited and are not necessary to be included in said district for any purpose, they shall extend or contract the boundaries of the proposed district so as to include or exclude all such lands or improvements, as the case may be, and the boundaries adopted and reported by them, upon the hearing of their report, as hereinafter provided, upon their application or that of any person interested, may be altered by the court in such manner as shall appear to be just; provided, that the alteration of boundaries as aforesaid shall not have the effect of so far enlarging or contracting the proposed district as to render such petition void or dismissable. Said report shall be filed with the clerk of the court.

History: En. Sec. 51, Ch. 129, L. 1921; re-en. Sec. 7315, R.C.M. 1921; re-en. Sec. 7315, R.C.M. 1935; amd. Sec. 6, Ch. 409, L. 1973; R.C.M. 1947, 89-2338.

85-8-345. Notice of hearing of report. (1) Upon the filing of the report under 85-8-341, the court shall make an order fixing the time and place when and where all interested persons may appear and protest against the confirmation of the petition. The clerk of court shall give notice to all interested parties by publication of the order for at least 3 successive weeks before the date of the hearing in at least one newspaper in each county in which lands located in the district are situated. The notice must contain a statement of the time and place of the hearing of the report and a brief statement of the substance of the report.

(2) Upon a date not later than the date of the first publication of the notice referred to in subsection (1), the clerk of court shall also cause to be mailed to each of the persons or corporations recommended by the report to be assessed or whose lands are recommended by the report to be included in the district, at the person's or corporation's last-known post-office address, a notice containing a brief description of the land or easement belonging to the person or corporation benefited or damaged, the net damage awarded to the tract, parcel, easement, or corporation, and the sum assessed against the benefited parcel, tract, easement, or corporation.

History: En. Secs. 52, 53, Ch. 129, L. 1921; re-en. Secs. 7316, 7317, R.C.M. 1921; re-en. Secs. 7316, 7317, R.C.M. 1935; R.C.M. 1947, 89-2339, 89-2340; amd. Sec. 2811, Ch. 56, L. 2009.

85-8-346. Modification of report. If the court finds that the report requires modification, the same may, by order of the court, be referred back to the commissioners, who may be required to modify it in any respect.

History: En. Sec. 54, Ch. 129, L. 1921; re-en. Sec. 7318, R.C.M. 1921; re-en. Sec. 7318, R.C.M. 1935; R.C.M. 1947, 89-2341.

85-8-347. Confirmation of report — appeals. If there be no remonstrance or if the finding be in favor of the validity of the proceedings or after the report shall have been modified to conform to the findings, the court shall confirm the report. The order of confirmation shall be final and conclusive, the proposed work shall be established and authorized, and the proposed assessments approved and confirmed unless within 30 days an appeal be taken to the supreme court. The said order of confirmation shall also fix the commissioners' bond.

History: En. Sec. 55, Ch. 129, L. 1921; re-en. Sec. 7319, R.C.M. 1921; re-en. Sec. 7319, R.C.M. 1935; R.C.M. 1947, 89-2342.

Cross-References

Construction assessments — annual installment, 85-8-611.

85-8-348. Modification of court order. Said order of confirmation may, at the same or at any subsequent term of said court, be revised, modified, or changed, in whole or in part, on petition of the commissioners, after such notice to parties adversely interested as the court may require.

History: En. Sec. 56, Ch. 129, L. 1921; re-en. Sec. 7320, R.C.M. 1921; re-en. Sec. 7320, R.C.M. 1935; R.C.M. 1947, 89-2343.

85-8-349. Supplemental report. At any time prior to making the order confirming said report or thereafter, the court may permit the commissioners to present and file a supplemental report or amend their report as to any matter which, pursuant to the provisions hereof, was or might have been included in the original report presented by them, and after reasonable notice given to all parties interested, in such manner as the court shall direct, the court may, upon the hearing in said matter, make such order as the case may require.

History: En. Sec. 57, Ch. 129, L. 1921; re-en. Sec. 7321, R.C.M. 1921; re-en. Sec. 7321, R.C.M. 1935; R.C.M. 1947, 89-2344.

85-8-350. Judgment on dismissal of proceedings — assessment of costs. (1) In case the petition or proceedings are dismissed as provided in 85-8-327, a judgment shall be entered for the costs, expenses, and liabilities incurred in said proceedings against the petitioners and in favor of the commissioners, but for the benefit of those who have rendered services or advanced money in the prosecution of said proceedings or have recovered costs on successful contests therein.

(2) In case the proceedings are dismissed at any time or the district is discontinued for any cause subsequent to the time provided in 85-8-327, a judgment shall be entered directing the commissioners of the district to assess the costs, expenses, and liabilities incurred in said proceedings, up to and including the time of such dismissal and discontinuation, on an acreage basis against the lands in said district, which assessment shall be a lien upon said lands from the date of said judgment superior to the lien of any other judgment, mortgage, or construction lien against said lands. Said assessment shall be verified by the commissioners of the district the same as assessments to pay costs of construction. Such assessments shall be spread upon the tax rolls of the counties in which said district is situated and shall be collected by the county treasurers of such counties the same as assessments to pay costs of construction are collected.

Such assessments shall be payable on or before November 30 following the date upon which they are so spread upon the assessment roll of such counties. The money so collected shall be paid out upon warrants issued by the commissioners of the district to those who have rendered service or advanced money in connection with said district or have recovered costs on successful contests therein. Should such assessment, for any cause, be not sufficient for all such costs, expenses, and liabilities, then additional assessments shall be made and collected in like manner until sufficient funds have been raised to pay all such costs, expenses, and liabilities.

History: **En. Sec. 58, Ch. 129, L. 1921; re-en. Sec. 7322, R.C.M. 1921; amd. Sec. 3, Ch. 169, L. 1929; re-en. Sec. 7322, R.C.M. 1935; R.C.M. 1947, 89-2345; amd. Sec. 149, Ch. 370, L. 1987.**

Cross-References

Procedure at court hearing and order, 85-8-327.

85-8-351. Statement of costs before entry of judgment. Before any such judgment is entered, said commissioners shall file with the clerk of the district court in which said proceedings were instituted an itemized statement of such costs and expenses, duly verified, upon which an order shall issue requiring said petitioners or landowners to show cause before said court, at a time and place named, why judgment should not be entered against said petitioners or landowners for the amount of said costs and expenses. Notice of the hearing of said order to show cause shall be given to said petitioners or landowners by mailing to each a copy thereof, to their last-known post-office address, at least 20 days prior to the time set for hearing and by publication of the same in one or more newspapers published in the county where the proceedings are pending at least 3 successive weeks prior to the day set for such hearing. Said notice need not contain an itemized statement of said account.

History: **En. Sec. 59, Ch. 129, L. 1921; re-en. Sec. 7323, R.C.M. 1921; amd. Sec. 4, Ch. 169, L. 1929; re-en. Sec. 7323, R.C.M. 1935; R.C.M. 1947, 89-2346.**

85-8-352. Contribution among petitioners. All petitioners shall, among themselves, contribute to the payment of said judgment in proportion to the number of acres of land they have within the boundaries of the proposed district at the time of filing of said petition.

History: **En. Sec. 60, Ch. 129, L. 1921; re-en. Sec. 7324, R.C.M. 1921; re-en. Sec. 7324, R.C.M. 1935; R.C.M. 1947, 89-2347.**

85-8-353 through 85-8-360 reserved.

85-8-361. Contracts. In all cases when the work to be done at any one time under the direction of the commissioners will, in their opinion, cost more than $15,000, the work must be awarded to the lowest responsible bidder. The commissioners shall advertise for sealed bids, by notice published in a newspaper published in the county in which the petition is filed, and may advertise in one or more newspapers published elsewhere. If there is no newspaper published in the county in which the petition is filed, the commissioners shall advertise in a newspaper published in an adjoining county. The notice must specify the time and place when and where the bids advertised will be opened, the kind of work to be contracted for, and the terms of payment. The commissioners may award contracts if in their judgment the contracts are necessary and shall reserve the right to reject any and all bids.

History: **En. Sec. 81, Ch. 129, L. 1921; re-en. Sec. 7345, R.C.M. 1921; re-en. Sec. 7345, R.C.M. 1935; R.C.M. 1947, 89-2801; amd. Sec. 1, Ch. 96, L. 1999; amd. Sec. 1, Ch. 79, L. 2013.**

Cross-References

Public contracts, Title 18, ch. 1.

85-8-362. Interest of commissioners in contracts forbidden. The commissioners may not, during their term of office, be interested, directly or indirectly, in any contract for the construction of any drain, ditch, levee, or other work in the drainage district, in the sale of materials for the drainage district, or in the wages of or supplies for personnel or teams employed on any construction work in the district.

History: **En. Sec. 82, Ch. 129, L. 1921; re-en. Sec. 7346, R.C.M. 1921; re-en. Sec. 7346, R.C.M. 1935; R.C.M. 1947, 89-2802; amd. Sec. 2812, Ch. 56, L. 2009.**

Cross-References

Proscribed acts related to contracts and claims, Title 2, ch. 2, part 2.

85-8-363. Commissioners' right of entry. The commissioners, their agents, servants, and employees shall have the right to go upon all lands along any drain, ditch, levee, or embankment in their district to inspect, deepen, widen, and repair the same, whenever necessary, doing no unnecessary damage, and shall not be liable for trespass therefor.

History: **En. Sec. 70, Ch. 129, L. 1921; re-en. Sec. 7334, R.C.M. 1921; re-en. Sec. 7334, R.C.M. 1935; R.C.M. 1947, 89-2406.**

Cross-References

Surface water and ground water — entry on land, 85-2-115.

85-8-364. Payment or tender of damages. (1) The damages allowed to the owners of lands must be paid or tendered before the commissioners are authorized to enter upon the lands (for damage to which the award is made) for the construction of any proposed drains, ditches, or levees. If the owner is unknown, if there is a contest in regard to the ownership of the land, if the owner will not receive payment, if there exists a mortgage or other lien against the land, or if the commissioners cannot for any other reason pay the owner, they may deposit the damages with the clerk of court for the benefit of the owner or parties interested, to be paid or distributed as the court shall direct. The deposit has the same effect as the tender to and acceptance of the damages awarded by the owner of the land.

(2) This section does not prevent the commissioners or their agents, servants, and employees from going upon the lands to do any and all work found necessary prior to making their assessment of benefits and award of damages and the trial on their report of the benefits and damages.

History: **En. Sec. 83, Ch. 129, L. 1921; re-en. Sec. 7347, R.C.M. 1921; re-en. Sec. 7347, R.C.M. 1935; R.C.M. 1947, 89-2803; amd. Sec. 2813, Ch. 56, L. 2009.**

85-8-365. Location of drains. When practicable, said drains provided for herein shall be laid out and constructed on the side of public highways or along natural watercourses.

History: **En. Sec. 84, Ch. 129, L. 1921; re-en. Sec. 7348, R.C.M. 1921; re-en. Sec. 7348, R.C.M. 1935; R.C.M. 1947, 89-2804.**

85-8-366. Drains on railroad lands. (1) Said commissioners shall have the right to lay out and construct all necessary drains, ditches, and levees across any railway right-of-way or yards in their district. Any railway company whose right-of-way or yards cross the line of any proposed drain, ditch, or levee shall open its right-of-way or yards and permit such drain, ditch, or levee to cross the same as soon as said drain, ditch, or levee is constructed to such right-of-way.

(2) Every drainage district shall be liable to the railway company whose right-of-way or yard any of its drains, ditches, or levees cross for the reasonable cost of the culverts and bridges made necessary by said drain, ditch, or levee crossing said right-of-way or yards but not of more expensive character than the average other culverts and bridges on said division of railway crossing streams or ditches of approximately the same width and depth and within 100 miles of said district ditches.

(3) Upon receiving 15 days' notice in writing, any railway company in whose right-of-way or yard any such drain, ditch, or levee is laid out shall open its right-of-way or yards and permit said commissioners and their contractors, agents, and employees to construct said drain, ditch, or levee or to repair, maintain, or clean out same across said right-of-way or yards. For every day after the end of said 15 days that said railroad company fails to open its said right-of-way or yard, as hereinbefore required, it shall forfeit $25 to said drainage district, to be collected in an action, as other forfeitures are collected, or set off against any damages that have been awarded to such company. If said railway company fails to open its right-of-way or yard along the line of said drainage district, drain, ditch, or levee, the commissioners may, at any time after the expiration of said 15 days, open such right-of-way and yard along the line of said drains, ditches, and levees and construct the same.

History: **En. Secs. 71, 72, 73, Ch. 129, L. 1921; re-en. Secs. 7335, 7336, 7337, R.C.M. 1921; re-en. Secs. 7335, 7336, 7337, R.C.M. 1935; R.C.M. 1947, 89-2407, 89-2408, 89-2409.**

85-8-367. Commissioners' powers during emergency. Commissioners having charge of any completed drain, ditch, levee, or other work constructed under any drainage law of the state of Montana, whether now in force or repealed, shall be authorized, in the case of an emergency, to make such repairs as may be necessary for the preservation and protection of the work under their control.

History: En. Sec. 63, Ch. 129, L. 1921; re-en. Sec. 7327, R.C.M. 1921; amd. Sec. 5, Ch. 169, L. 1929; amd. Sec. 1, Ch. 97, L. 1931; re-en. Sec. 7327, R.C.M. 1935; R.C.M. 1947, 89-2350(part).

Cross-References

Authority to borrow money and issue notes or bonds, 85-8-501.

85-8-368. Annual report — objections. (1) The commissioners shall, on or before the first Tuesday of March of each year, file with the clerk of court having jurisdiction a report in which they shall specify in detail:

(a) the emergency repairs which they have made during the preceding year;

(b) the labor and repairs then necessary to the preservation and protection of the work under their control;

(c) the places where such labor and repairs are especially needed;

(d) the amount of the outstanding indebtedness of the district; and

(e) the sum to be assessed against each tract, lot, easement, or corporation to pay all emergency repairs theretofore done, necessary labor and repairs to be done during the ensuing year, maintenance, incidental expenses, and interest on and principal of all outstanding indebtedness.

(2) No notice of the filing of such report shall be necessary. All such assessments shall be apportioned on the last assessment roll of drain districts or on the last assessments in drainage districts confirmed by the court having jurisdiction thereof.

(3) Within 30 days after filing such annual report, at a time and place to be fixed by the court or presiding judge, the court or presiding judge shall examine said report, hear all objections to the same, fix and determine the amount of such assessments, and cause such adjudication to be entered of record in said court and a certified copy of the same to be delivered to said commissioners.

History: (1), (2)En. Sec. 63, Ch. 129, L. 1921; re-en. Sec. 7327, R.C.M. 1921; amd. Sec. 5, Ch. 169, L. 1929; amd. Sec. 1, Ch. 97, L. 1931; re-en. Sec. 7327, R.C.M. 1935; Sec. 89-2350, R.C.M. 1947; (3)En. Sec. 64, Ch. 129, L. 1921; re-en. Sec. 7328, R.C.M. 1921; re-en. Sec. 7328, R.C.M. 1935; Sec. 89-2351, R.C.M. 1947; R.C.M. 1947, 89-2350(part), 89-2351.

Part 4
Alteration of District

85-8-401. Alterations or additions to district — petition required. (1) Whenever, in the judgment of the commissioners of any drain district or drainage district, it is necessary or will be beneficial to such district to make any alteration and/or any addition to the drainage system of such district, they shall file a petition with the clerk of the court having jurisdiction of such district, in which shall be stated:

(a) the proposed alteration of and/or the proposed addition to the drainage system of said district;

(b) the necessity therefor; and

(c) the probable cost of making such alteration and/or addition.

(2) Whenever such commissioners shall fail or refuse to file such petition or in event any landowners desire to file such petition, such petition may be filed by such landowners, provided the same be signed by the owners of at least 40% in area of the lands in said district.

History: En. Sec. 7364C by Sec. 2, Ch. 97, L. 1931; re-en. Sec. 7364.3, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1953; R.C.M. 1947, 89-2702.

85-8-402. Hearing — notice and service. Upon the filing of a petition under 85-8-401, a judge of the district court shall set the petition for hearing and direct the clerk of court to give notice of the hearing. The notice must contain a concise statement of the proposed alteration or addition and the estimated cost of the alteration or addition. The notice must be served and published at least 20 days before the date fixed for the hearing. Service of the notice must be made by certified mail, addressed to each landowner and corporation that may be liable for the payment of any portion of the cost of making the alteration or addition, at the landowner's or corporation's post-office address, if the address can be ascertained by the exercise of due diligence. The notice must be published once a week for 20 days prior to the date of the hearing in a newspaper, to be designated in the order fixing the date for the hearing, published in the county where the court is held. However, if all interested landowners and corporations are served, the notice need not be published.

History: **En. Sec. 7364D by Sec. 2, Ch. 97, L. 1931; re-en. Sec. 7364.4, R.C.M. 1935; R.C.M. 1947, 89-2703; amd. Sec. 2814, Ch. 56, L. 2009.**

85-8-403. Court order — dismissal of petition. (1) A landowner or corporation may, at any time prior to 5 days before the date fixed for the hearing under 85-8-402, file objections to the petition. A copy of the objections must be delivered to the attorney for the commissioners, if they have an attorney of record, or to the presiding officer of the board of commissioners of the district, if there is no attorney of record, prior to filing the original objections with the clerk of court.

(2) If objections are made and filed by the owners of at least 75% in area of the lands in the district, the petition must be dismissed and further proceedings may not be taken. If the owners of less than 75% in area of the lands in the district object to the petition, then, on the date fixed for hearing or upon any day to which the hearing may be adjourned, the court having jurisdiction will hear testimony in support of and in opposition to the petition.

(3) After the hearing, the court shall determine whether the proposed alteration or addition is necessary and whether it will be beneficial to the district and improve the drainage system of the district and shall either approve or deny the petition or modify and change the proposed alteration or addition. If the court approves the petition or modifies and changes the alteration or addition proposed, the court shall by order direct the commissioners to proceed with the work with all convenient speed.

(4) As far as possible, the hearing must be conducted as other hearings and trials in the district courts of the state of Montana, and the laws of the state of Montana with reference to hearings and trials, as far as applicable, govern in the conduct of the hearings.

History: **En. Sec. 7364E by Sec. 2, Ch. 97, L. 1931; re-en. Sec. 7364.5, R.C.M. 1935; amd. Sec. 2, Ch. 70, L. 1953; R.C.M. 1947, 89-2704; amd. Sec. 2815, Ch. 56, L. 2009.**

85-8-404. Appeals and assessments. A party interested in the hearing under 85-8-402 who is aggrieved by the order of the court may appeal from the order to the supreme court of Montana within 30 days after the entry of the order. If an appeal is not taken within the time limit, the order of the court made upon the hearing is final and conclusive. If alterations or additions are authorized by the order, the alterations or additions must be made by the commissioners of the district and the cost apportioned in accordance with the last assessment roll of the drain district or in accordance with the last assessments of the drainage district confirmed by the court.

History: **En. Sec. 7364F by Sec. 2, Ch. 97, L. 1931; re-en. Sec. 7364.6, R.C.M. 1935; R.C.M. 1947, 89-2705; amd. Sec. 2816, Ch. 56, L. 2009.**

85-8-405. Exclusion of lands from district. Any lands within a drainage district, which district is not bonded or indebted and which lands have not been and will not in the future be benefited by the drainage system of the district and which lands do not contribute water to seep other lands in the district, may be excluded or eliminated from said district by an order of the district court of the county wherein the said lands are situate upon the proceedings hereinafter set forth being had.

History: **En. Sec. 1, Ch. 155, L. 1941; R.C.M. 1947, 89-2706.**

85-8-406. Court action — parties. An action for the exclusion of lands from any such drainage district may be brought in the district court of the county wherein said lands are situated by the owner or owners in fee of said lands, who shall be designated as the plaintiff or plaintiffs, and in said action the members of the board of drainage commissioners of said drainage district shall be made defendants.

History: **En. Sec. 2, Ch. 155, L. 1941; amd. Sec. 1, Ch. 196, L. 1943; R.C.M. 1947, 89-2707.**

85-8-407. Complaint required — contents. (1) Said action shall be commenced by filing in the office of the clerk of the district court a complaint which must contain:

(a) the title of the action, the name of the court and the county in which the action is brought, and the names of the parties to the action;

(b) a statement of the facts constituting the cause of the action, in ordinary and concise language;

(c) a demand for the relief which the plaintiff claims.

(2) The complaint shall be verified in the same manner as complaints in other civil actions.

History: **En. Sec. 3, Ch. 155, L. 1941; R.C.M. 1947, 89-2708.**

85-8-408. Summons. (1) Upon the filing of the complaint the clerk of the court shall issue a summons which shall contain, in addition to the matters specified in Rules 4 and 12(a), Montana Rules of Civil Procedure, a brief statement of the relief demanded and a description of the lands sought to be excluded from the drainage district.

(2) The summons shall be served upon the president and secretary of the board of drainage commissioners, and such service shall be deemed as service upon the drainage district.

History: **(1)En. Sec. 4, Ch. 155, L. 1941; Sec. 89-2709, R.C.M. 1947; (2)En. Sec. 5, Ch. 155, L. 1941; amd. Sec. 2, Ch. 196, L. 1943; Sec. 89-2710, R.C.M. 1947; R.C.M. 1947, 89-2709, 89-2710.**

85-8-409. Rules of practice applicable. The same rules relative to the filing of answers and replies relative to other causes of action affecting the title to real property shall apply in actions to exclude lands from a drainage district, and all issues arising may be tried by the court without a jury.

History: **En. Sec. 6, Ch. 155, L. 1941; amd. Sec. 45, Ch. 460, L. 1977; R.C.M. 1947, 89-2711.**

85-8-410. Court order excluding lands. If the issue shall be found in favor of the plaintiff, the court may make its order describing the lands to be excluded from the district, and a certified copy of the same shall be filed in the office of the county recorder of the county wherein the lands are situate. From and after the date of such order the lands shall no longer be liable for any assessment levied by the district against the lands excluded.

History: **En. Sec. 7, Ch. 155, L. 1941; R.C.M. 1947, 89-2712.**

85-8-411. Appeals. Appeals may be taken from the orders and judgments of the district court to the supreme court of the state of Montana in the same manner as appeals in other causes of action affecting the title to real property.

History: **En. Sec. 8, Ch. 155, L. 1941; R.C.M. 1947, 89-2713.**

Cross-References

Appeals to Supreme Court, Title 25, ch. 21.

85-8-412 through 85-8-420 reserved.

85-8-421. Procedure to bring other drained lands into district. (1) Whenever any drained lands outside a drainage district are receiving the benefits of the drains of said district, by direct or indirect, natural or artificial connection therewith, the commissioners of said district may report said facts to the court and ask that said lands, describing them, be brought into said district and assessed for the benefits received by them from the drains, ditches, or levees of said district.

(2) Upon the filing of said report, the court shall order the owners of such lands to be notified of the filing of said report and the contents thereof and shall require such owners to show cause at a time and place therein fixed, not less than 20 days thereafter, why their lands should not be brought into said district and assessed for said benefits.

(3) At the time and place fixed for hearing said report, any of said landowners may appear and remonstrate against the confirmation of said report. All remonstrances shall be in writing, verified, and shall set forth the facts on which they are based. All issues arising on said report shall be tried by the court without a jury.

History: **En. Secs. 85, 86, 87, Ch. 129, L. 1921; re-en. Secs. 7349, 7350, 7351, R.C.M. 1921; re-en. Secs. 7349, 7350, 7351, R.C.M. 1935; R.C.M. 1947, 89-2805, 89-2806, 89-2807.**

Cross-References

Assessment of unassessed, benefited lands, 85-8-618.

85-8-422. Court order for annexation — appeal. (1) If the court shall find that said lands or any of them are receiving the benefits of any such drain, ditch, or levee, the court shall so find in writing and shall order said lands to be annexed to and made a part of said district and benefits to be assessed against the same by the commissioners of said district.

(2) Said order shall be final and conclusive unless appealed from to the supreme court within 30 days from the date of entry thereof.

History: **En. Secs. 88, 89, Ch. 129, L. 1921; re-en. Secs. 7352, 7353, R.C.M. 1921; re-en. Secs. 7352, 7353, R.C.M. 1935; R.C.M. 1947, 89-2808, 89-2809.**

85-8-423. Assessments against annexed lands. The commissioners shall, after the time for appeal is past, assess against each parcel, tract, and easement of the annexed lands reasonable and just benefits and shall assess against these lands for construction and repairs such sums as are just. If lands similarly situated and benefited are found in the district, the annexed lands shall be assessed a like sum of benefits and damages as the similar lands in the district to which they are sought to be annexed and a sum for construction of the work, which shall be equal to all sums assessed, for the complete construction of the drainage system in the district to which they are sought to be annexed against lands having the same assessment of benefits in the district.

History: En. Sec. 90, Ch. 129, L. 1921; re-en. Sec. 7354, R.C.M. 1921; re-en. Sec. 7354, R.C.M. 1935; amd. Sec. 46, Ch. 460, L. 1977; R.C.M. 1947, 89-2810.

85-8-424. Confirmation of commissioners' report of assessments. The commissioners shall file their report and assessments in court. The court shall, by order, require said owners to show cause at a time and place therein fixed, not less than 20 days after the service of said order, why said report and assessments should not be confirmed. On the hearing of said order to show cause, if a jury trial is demanded, the court shall frame issues on benefits and damages and impanel a jury or adjourn the hearing thereon until some term of court when a jury is in attendance and take the verdict of a jury on such issues. All other issues arising on said report shall be tried by the court. The court shall order all necessary amendments of said report and make written findings of fact and, when said report is amended, shall by order confirm the same.

History: En. Sec. 91, Ch. 129, L. 1921; re-en. Sec. 7355, R.C.M. 1921; re-en. Sec. 7355, R.C.M. 1935; R.C.M. 1947, 89-2811.

Cross-References

Assessment of unassessed, benefited lands, 85-8-618.

Part 5
Bonds and Revenue

85-8-501. Authority to borrow money and issue notes or bonds. The commissioners may:

(1) borrow money, not exceeding the amount of assessment for the cost of construction and additional assessments, as provided in 85-8-367 and 85-8-368, unpaid at the time of borrowing, for the construction or repair of any work which they shall be authorized to construct or repair or for the payment of any indebtedness which they may have lawfully incurred; and

(2) issue notes or negotiable coupon bonds on the district, bearing interest, payable semiannually and not running beyond 1 year after the payment of the last installment of the assessment, on account of which money is borrowed, shall fall due.

History: En. Sec. 79, Ch. 129, L. 1921; re-en. Sec. 7343, R.C.M. 1921; re-en. Sec. 7343, R.C.M. 1935; amd. Sec. 13, Ch. 260, L. 1959; amd. Sec. 36, Ch. 234, L. 1971; R.C.M. 1947, 89-2501(1).

85-8-502. Resolution for issuance of notes or bonds. Before the issuance of said notes or bonds, the commissioners shall pass a resolution providing for the issuance of such notes or bonds. Said resolution shall fix the rate of interest which said notes or bonds shall bear, the time of payment, and, if redeemable before maturity, the date thereof; shall prescribe the denominations, not exceeding $1,000, and form thereof; and may provide that both the principal and interest of said notes and bonds shall be payable at some convenient banking house or trust company's office, to be named in said notes or bonds. Such notes or bonds and the coupons attached thereto shall bear the signatures of the president and the secretary of the drainage district. The corporate seal of the drainage district shall be affixed to each of the notes or bonds.

History: En. Sec. 79, Ch. 129, L. 1921; re-en. Sec. 7343, R.C.M. 1921; re-en. Sec. 7343, R.C.M. 1935; amd. Sec. 13, Ch. 260, L. 1959; amd. Sec. 36, Ch. 234, L. 1971; R.C.M. 1947, 89-2501(2).

85-8-503. Sale of notes or bonds. Upon execution, the notes or bonds must be deposited with the county treasurer, who shall register the notes or bonds in a book for that purpose that documents the number and amount of each note or bond, its date, the date payable and redeemable, where payable, and the person to whom issued. Upon sale of the notes or bonds, the county treasurer shall deliver the notes or bonds to the person or persons to whom they were sold, upon the person or persons making payment for the notes or bonds. The notes or bonds may be sold by the commissioners at either public or private sale, either with or without advertisement, if it is considered to be in the best interests of the district. The notes or bonds may not be sold at less than 97% of face value. The notes or bonds may not be held to make the commissioners personally liable but constitute a lien upon the assessments for the repayment of the principal and interest of the notes or bonds.

History: En. Sec. 79, Ch. 129, L. 1921; re-en. Sec. 7343, R.C.M. 1921; re-en. Sec. 7343, R.C.M. 1935; amd. Sec. 13, Ch. 260, L. 1959; amd. Sec. 36, Ch. 234, L. 1971; R.C.M. 1947, 89-2501(3); amd. Sec. 30, Ch. 253, L. 2011.

85-8-504. Disposition of excess money. In case any moneys derived from bonds sold to pay for the original construction of said improvement, now or hereafter, remain on hand after the work is completed in original construction and paid for and not raised for damages unpaid for, such residue may be used in the maintenance and repair, as provided in this chapter, before making assessments for such maintenance and repair.

History: En. Sec. 79, Ch. 129, L. 1921; re-en. Sec. 7343, R.C.M. 1921; re-en. Sec. 7343, R.C.M. 1935; amd. Sec. 13, Ch. 260, L. 1959; amd. Sec. 36, Ch. 234, L. 1971; R.C.M. 1947, 89-2501(4).

85-8-505. Refunding indebtedness of district. The court may, on the petition of the commissioners, authorize them to refund any lawful indebtedness of the district by:

(1) taking up and canceling all of its outstanding notes and bonds, as fast as they become due or before, if the holders thereof will surrender the same; and

(2) issuing in lieu thereof new notes or bonds of such district, payable in such longer time as the court shall deem proper, not to exceed in the aggregate the amount of all notes and bonds of the district then outstanding and the unpaid accrued interest thereon.

History: En. Sec. 80, Ch. 129, L. 1921; re-en. Sec. 7344, R.C.M. 1921; re-en. Sec. 7344, R.C.M. 1935; amd. Sec. 42, Ch. 234, L. 1971; R.C.M. 1947, 89-2502.

Part 6
Taxes and Assessments

85-8-601. Certification and collection of district taxes. (1) Subject to 15-10-420 and on or before the third Monday in August of each year, the commissioners shall certify to the department of revenue a correct list of all the district lands in each county and the owners of the lands, together with a statement of the amount of the total tax or assessment against the lands for district purposes for that year. The department of revenue shall immediately enter the assessment roll in the property tax record of the county for each year.

(2) The county treasurer of each county in which a drainage district is located, in whole or in part, shall collect and receipt for all taxes and assessments levied by the district in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. However, the treasurer must receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not. When a county is the possessor of a tax lien for any real estate on account of which the district taxes and assessments have been levied, the taxpayer may pay to the treasurer at any time any semiannual installment of the district tax or assessment, together with the penalty and interest to date of payment on the installment. However, the payment may not be considered a redemption of the property from the tax lien, but must be credited on account of any redemption that may later be made. In case of any payment pursuant to this subsection, a separate tax receipt must be issued showing exactly what assessments have been paid and showing that no other tax on the real estate has been received by the treasurer. However, the county treasurer may not collect, receive, or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any drainage district upon which an assessment for the purposes of the drainage district has been levied unless the assessment levied for the drainage district purposes is either paid as provided in this section and the receipt is presented to the county treasurer at the time the real estate taxes are paid or paid at the time the drainage district taxes are paid.

History: (1)En. Sec. 65, Ch. 129, L. 1921; re-en. Sec. 7329, R.C.M. 1921; re-en. Sec. 7329, R.C.M. 1935; amd. Sec. 1, Ch. 12, L. 1945; amd. Sec. 66, Ch. 391, L. 1973; Sec. 89-2401, R.C.M. 1947; (2)En. Sec. 1, Ch. 71, L. 1923; amd. Sec. 1, Ch. 73, L. 1935; re-en. Sec. 2172.1, R.C.M. 1935; amd. Sec. 1, Ch. 188, L. 1943; Sec. 84-4108, R.C.M. 1947; R.C.M. 1947, 84-4108(part), 89-2401; amd. Sec. 155, Ch. 27, Sp. L. November 1993; amd. Sec. 160, Ch. 584, L. 1999; amd. Sec. 36, Ch. 110, L. 2007; amd. Sec. 42, Ch. 67, L. 2017.

Cross-References

Method of collection of taxes and assessments, 85-7-2136.

85-8-602. Tax collection if lands in several counties. Where lands of any district lie in more than one county, the district taxes or assessments collected in all other counties shall be remitted to the county treasurer of the county wherein the court having jurisdiction of said district is located, on or before January 1 of each year.

History: En. Sec. 66, Ch. 129, L. 1921; re-en. Sec. 7330, R.C.M. 1921; re-en. Sec. 7330, R.C.M. 1935; R.C.M. 1947, 89-2402.

85-8-603. Rules of law applicable to tax collection. The rules of law applying to the collection of taxes and sale of land for taxes shall, unless in conflict with this chapter, apply to the collection and sale of lands for drainage assessments. Delinquent sales of land for unpaid taxes and assessments shall be made in the same manner as for state and county taxes in the respective counties where such lands are situate, and the right of redemption shall in all cases be made the same as in cases where lands are sold for state or county taxes. Such drainage district shall be entitled to the benefit of all penalties and interest upon delinquent district assessments.

History: En. Sec. 67, Ch. 129, L. 1921; re-en. Sec. 7331, R.C.M. 1921; re-en. Sec. 7331, R.C.M. 1935; R.C.M. 1947, 89-2403.

Cross-References

Collection of property taxes, Title 15, ch. 16.

Tax liens, Title 15, ch. 17.

85-8-604 through 85-8-610 reserved.

85-8-611. Construction assessments — annual installment. At the time of the confirmation of the assessments as provided in 85-8-347, the court may order the assessment for construction of new work to be paid in not more than 15 annual installments of such amounts and at such times as will be convenient for the accomplishment of the proposed work or for the payment of the principal and interest of such notes or bonds of the district as the court grants authority to issue for the construction of new work. The court shall also by such order fix a date on which the first installment of the assessments for construction shall become due, not more than 5 years after the date of the order, and each of the installments shall draw interest at the rate fixed by the court in accordance with law from the date of the order.

History: En. Sec. 61, Ch. 129, L. 1921; re-en. Sec. 7325, R.C.M. 1921; re-en. Sec. 7325, R.C.M. 1935; amd. Sec. 35, Ch. 234, L. 1971; amd. Sec. 42, Ch. 460, L. 1977; R.C.M. 1947, 89-2348.

85-8-612. Lien of assessments — payment of assessments against state lands. (1) From the time of the entry of an order under 85-8-611, assessments for construction of new work and additional assessments and interest on the assessments are a lien upon the lands assessed until paid. An owner of land or a corporation assessed for construction may, at any time within 30 days after the confirmation of the report, pay into court the amount of the assessment against the person's land or any tract of land or against the corporation. Payment relieves the lands from the lien of the assessment and the corporation from all liability on the assessment.

(2) Upon presentation to the state treasurer of an order of the district court having jurisdiction of the drainage district, properly certified, the department of administration shall draw a warrant on the treasury on the appropriate fund in favor of the commissioners of the drainage district for the total amount that may be assessed against any state lands included in the district. Upon payment of the warrant, the lands are relieved from the lien created for the costs of construction.

History: En. Sec. 62, Ch. 129, L. 1921; re-en. Sec. 7326, R.C.M. 1921; re-en. Sec. 7326, R.C.M. 1935; R.C.M. 1947, 89-2349; amd. Sec. 32, Ch. 325, L. 1995; amd. Sec. 2817, Ch. 56, L. 2009.

Cross-References

State tax liens, Title 15, ch. 16, part 4.

85-8-613. Assessments against certain corporations. Assessments against all public corporations or any private corporation not owning land within the district shall be payable to the county treasurer wherein the court having jurisdiction of the district is located, on or before September 1 of each year.

History: En. Sec. 68, Ch. 129, L. 1921; re-en. Sec. 7332, R.C.M. 1921; re-en. Sec. 7332, R.C.M. 1935; R.C.M. 1947, 89-2404.

85-8-614. Procedure on failure to certify assessments. When commissioners shall fail to certify to the county treasurer of the proper county any one or more drainage assessments for construction or repair or additional assessment against any lands (including improvements where benefited) in said district at the proper time, they may certify the same to the county treasurer at any time thereafter, whether in the same or any subsequent year.

History: En. Sec. 69, Ch. 129, L. 1921; re-en. Sec. 7333, R.C.M. 1921; re-en. Sec. 7333, R.C.M. 1935; amd. Sec. 7, Ch. 409, L. 1973; R.C.M. 1947, 89-2405.

85-8-615. Procedure to levy additional assessments. Subject to 15-10-420, if in the first assessment for construction the commissioners reported to the court a smaller sum than is needed to complete the work of construction or if in any year an additional sum is necessary to pay the lawful indebtedness of the drainage district, further or additional assessments on the land (including improvements where benefited) and corporations benefited, proportioned on the last assessment of benefits that has been approved by the court, must be made by the commissioners of the drainage district under the order of the court. However, the total assessments for original construction and any additional assessments, other than for maintenance, incidental expense, and interest on bonds, may not exceed the total assessments of benefits as provided in 85-8-342. Notice of the hearing of the application for the additional assessment must be published at least once each week for 3 consecutive weeks in one newspaper published in each county in which the lands, or any part of the lands, within the district are situated. The further or additional assessment may be made payable in installments as specified in 85-8-611 and must be treated and collected in the same manner as the original assessments for construction confirmed by the court in the drainage district.

History: En. Sec. 74, Ch. 129, L. 1921; re-en. Sec. 7338, R.C.M. 1921; re-en. Sec. 7338, R.C.M. 1935; amd. Sec. 8, Ch. 409, L. 1973; R.C.M. 1947, 89-2410; amd. Sec. 161, Ch. 584, L. 1999.

85-8-616. Correction of omissions. Omission to assess benefits, to assess for construction, to make additional assessments, to make assessment for repairs, to award damages to any one or more tracts of land or easements in a drainage district or to assess benefits, assess for construction, assess for repairs, or make additional assessments against any corporation which should have been assessed does not affect the jurisdiction of the court to confirm the report or to render the benefits assessed, the assessments for construction, additional assessments, or assessments for repairs against other lands or assessments against any corporation voidable; but the commissioners of the drainage district shall thereafter, as soon as they discover the omission or as soon as they have notice thereof, either agree with the omitted parties upon the proper assessments and award the damages or assess such benefits, make such assessments for construction, and make such additional assessments against the omitted lands and corporations and award such damages as are just and report the facts, together with such assessments and awards, to the court.

History: En. Sec. 75, Ch. 129, L. 1921; re-en. Sec. 7339, R.C.M. 1921; re-en. Sec. 7339, R.C.M. 1935; amd. Sec. 43, Ch. 460, L. 1977; R.C.M. 1947, 89-2411.

85-8-617. Illegal assessments. In case the court decides that any land should not have been assessed for drainage purposes or that any assessment is void, the commissioners of the district shall:

(1) levy an additional assessment on all of the assessable lands, irrigation ditches, railroads, corporations, and individual owners, based on the last assessment of the district approved by the court, sufficient to pay the sum lost to the district by reason of such void assessment; or

(2) pay such sum out of the general fund of the district.

History: En. Sec. 78, Ch. 129, L. 1921; re-en. Sec. 7342, R.C.M. 1921; re-en. Sec. 7342, R.C.M. 1935; amd. Sec. 2, Ch. 109, L. 1923; amd. Sec. 6, Ch. 169, L. 1929; R.C.M. 1947, 89-2412.

85-8-618. Assessment of unassessed, benefited lands. Whenever any lands from which surface or seepage water enters any drain or upon which or through which surface or seepage water has been prevented from flowing because of the construction of any drain have not been included within the drainage district that constructed the drains or drain or the owner of any irrigation ditch or canal from which water seeps, drains, or wastes to, upon, or through lands included within a drainage district has not been assessed for the cost of construction of the drainage system of the drainage district, the commissioners of the district may report the facts to the court and ask that the lands be brought into the district and assessed for their proportionate share of the cost of the drainage system. Subject to 15-10-420, the report may ask that the owner of any irrigation ditch or canal be assessed its proportionate share of the costs of construction of the drainage system. The same proceedings as set out in 85-8-421 through 85-8-424 for the determination and levy of assessments against drained lands outside of the drainage district receiving benefits from the drainage of the district must be commenced to determine the proper assessments, if any, to be levied against the lands and the owner of the irrigation ditch or canal to aid in payment of costs of construction.

History: En. Sec. 7364A by Sec. 7, Ch. 169, L. 1929; re-en. Sec. 7364.1, R.C.M. 1935; R.C.M. 1947, 89-2601; amd. Sec. 162, Ch. 584, L. 1999.

85-8-619. Assessments to have effect of judgment. Each and every sum assessed for construction, for additional assessment, or for repairs against any land or against any corporation, as soon as such assessment is confirmed by the court, shall be and is declared to be a judgment of the district court in favor of said drainage district and against said land or corporation. Unless some other method of collection is herein provided, the judgment shall be collected in the same manner as any other money judgment is collected; provided, that whenever said assessment is a lien upon land, it shall only be collected out of said land on which it is a lien.

History: En. Sec. 93, Ch. 129, L. 1921; re-en. Sec. 7357, R.C.M. 1921; re-en. Sec. 7357, R.C.M. 1935; R.C.M. 1947, 89-2813.

85-8-620. Bonds not to be affected by assessment change. No bonds or other money obligations issued by any drainage district shall be adversely affected by any subsequent change in assessments of benefits.

History: En. Sec. 94, Ch. 129, L. 1921; re-en. Sec. 7358, R.C.M. 1921; re-en. Sec. 7358, R.C.M. 1935; R.C.M. 1947, 89-2814.

85-8-621. Renumbered 85-8-803. Code Commissioner, 1983.

85-8-622. Agreement of landowners to omitted assessments. In case of omission to assess any corporation or land that should be assessed for benefits, construction, repairs, or additional assessments or to award damages, said omitted party and the owner of omitted land may in writing agree with the commissioners of said district what the assessment should be against said land or against said corporation or what said damages should be, and such agreement shall be acknowledged and witnessed, as provided above for waivers, and be filed in the court.

History: En. Sec. 97, Ch. 129, L. 1921; re-en. Sec. 7361, R.C.M. 1921; re-en. Sec. 7361, R.C.M. 1935; R.C.M. 1947, 89-2817.

85-8-623. Assessments not to be obstructed by preliminary defects. The collection of any assessments made by the commissioners for construction and confirmed by the court shall not be restrained or obstructed by reason of any omission, imperfection, or defect in the organization of any district or in any proceedings occurring prior to the order confirming the assessments of benefits, but such order shall be conclusive as to the regularity of all proceedings relating to the assessments of benefits unless appealed from within 30 days after the entry of such order.

History: En. Sec. 99, Ch. 129, L. 1921; re-en. Sec. 7363, R.C.M. 1921; re-en. Sec. 7363, R.C.M. 1935; re-en. Sec. 7363, R.C.M. 1935; R.C.M. 1947, 89-2819.

85-8-624. Assessments on improvements — taxpayers' approval, limitations, and election procedures. (1) A vote of the persons on the assessment rolls in any existing district is required to make Chapter 409, Laws of 1973, applicable to a district.

(2) Chapter 409, Laws of 1973, does not confer on districts created for drainage purposes only the authority to levy assessments on benefits to improvements.

(3) The election provided for by subsection (1) must be governed by the following rules:

(a) Notice of the election must be as provided in 13-1-108.

(b) The election must be conducted in accordance with Title 13, chapter 1, part 5, except that voter registration may not be required.

(c) The qualifications of electors must be as provided in 85-8-305, except that, in addition to persons holding title or evidence of title to lands within the district, any person, as provided in 85-8-305, who does not own land within the district but has been assessed or will have the person's improvements assessed under Chapter 409, Laws of 1973, or who will be assessed for benefits received is entitled to one vote. Commissioners shall prepare a list of persons entitled to vote, and the election administrator shall give them notice as provided in 13-1-108.

(d) The commissioners of any district in existence prior to March 21, 1973, who wish to hold an election to determine if the district is governed by Chapter 409, Laws of 1973, shall at any regular or special meeting adopt a resolution calling for an election to determine whether or not the voters of the district wish to be governed by Chapter 409, Laws of 1973. The resolution must contain a short summary of the changes made by Chapter 409, Laws of 1973, and the summary must be included in the notice provided for by 13-1-108. In addition, the commission shall provide copies of Chapter 409, Laws of 1973, to any person interested in obtaining a copy, and the notice to the persons in the district calling the election must describe where and how copies may be obtained. The commissioners may authorize a reasonable charge for providing copies, not to exceed 20 cents a page.

(e) The ballot must include the summary as provided for in subsection (3)(d), and the form of the ballot must conform as closely as possible to that provided for in Title 13, chapter 27.

(f) A simple majority of those who cast valid ballots determines the outcome of the election.

History: (1)En. Sec. 10, Ch. 409, L. 1973; amd. Sec. 1, Ch. 147, L. 1974; Sec. 89-2330.1, R.C.M. 1947; (2)En. Sec. 11, Ch. 409, L. 1973; Sec. 89-2330.2, R.C.M. 1947; (3)En. 89-2330.3 by Sec. 2, Ch. 147, L. 1974; amd. Sec. 27, Ch. 342, L. 1977; Sec. 89-2330.3, R.C.M. 1947; R.C.M. 1947, 89-2330.1, 89-2330.2, 89-2330.3; amd. Sec. 12, Ch. 326, L. 1979; amd. Sec. 18, Ch. 400, L. 1979; amd. Sec. 194, Ch. 575, L. 1981; amd. Sec. 3, Ch. 24, L. 1985; amd. Sec. 150, Ch. 370, L. 1987; amd. Sec. 4, Ch. 367, L. 2003; amd. Sec. 253, Ch. 49, L. 2015.

Part 7
Flood Control and Planning

Part Cross-References

Flood plain and floodway management, Title 76, ch. 5.

85-8-701. Purpose of part. (1) The purpose of this part is to confer certain additional powers on drainage districts already created or to be created under the laws of the state of Montana for the purposes of cooperating with the government of the United States and landowners in flood prevention and the conservation, development, utilization, and disposal of water for the further development of the economy of this state and for the promotion of the public health and welfare.

(2) The purpose of this part is to enable existing drainage districts or newly created drainage districts as provided herein to enter into cooperative agreements and programs to carry out the purposes of Public Law 566, 83rd congress of the United States, or other laws of the national congress pertaining to flood prevention and the conservation, development, utilization, and disposal of water. This part is to be given a liberal construction to the end that these purposes may be carried out, and to this end all political subdivisions of the state of Montana, all agencies and departments of the state government, and all soil conservation districts are authorized to cooperate with, expend funds for, and enter into agreements with drainage districts and any agencies of the United States government for the purpose of carrying out the provisions of this part and Public Law 566, 83rd congress of the United States, or other laws of the national congress pertaining to flood prevention and the conservation, development, utilization, and disposal of water.

(3) None of the additional powers granted by this part shall be exercised except for the purpose of participating in projects or programs authorized under Public Law 566, 83rd congress of the United States, or other laws of the national congress pertaining to flood prevention and the conservation, development, utilization, and disposal of water.

History: En. Secs. 1, 5, Ch. 3, L. 1957; R.C.M. 1947, 89-2821, 89-2825.

85-8-702. Additional powers. To the end that soil and water conservation measures may be improved, flood prevention and drainage programs strengthened, and the land and water economy of the state stabilized, the following additional powers are conferred upon presently existing drainage districts or new districts as created and established under this chapter and laws amendatory thereof and supplementary thereto:

(1) to carry out necessary measures for the prevention of floodwater and sediment damages and for the conservation, development, utilization, and disposal of water and to adopt necessary regulations, policies, and procedures to accomplish these ends, subject to the approval of the district court and on proper notice to interested parties as is provided for in the general statutes pertaining to drainage districts;

(2) to cooperate and enter into agreements to carry out the purposes of this part with (and to receive financial and other assistance from) state agencies and political subdivisions of the state, other organizations created under state laws, and the government of the United States and agencies thereof and to enter into agreements with (and to accept contributions from) private landowners for the purposes of this part;

(3) to construct, operate, and maintain such works of improvement, including structures and related measures, as are needed to carry out their broadened purposes as set forth herein, subject to the approval of the district court and on proper notice to interested parties as set forth in this chapter;

(4) to acquire lands, easements, and rights-of-way for sites for structures and for the flowage or impoundment of waters, such acquisitions for such purposes to be accomplished in the same manner and through the same powers and procedures as provided for under this chapter;

(5) to enlarge their boundaries to permit the construction of additional needed works of improvement or to construct additional needed works of improvement outside their boundaries, subject to approval of the district court and on proper notice to interested parties in the manner set forth in this chapter;

(6) to make assessments and issue bonds for carrying out the purposes of this part and for constructing, maintaining, and operating any structures or improvements established as provided herein, such assessments and bond issues to be made in the same manner and through the same procedures as under this chapter, including the right to extend annual installments for repayment of construction costs over a period of not more than 50 years and subject to the approval of the district court in the same manner and on the same notice to the interested parties as in the first instance of approving assessments, bond issues, and benefits.

History: En. Sec. 2, Ch. 3, L. 1957; R.C.M. 1947, 89-2822.

85-8-703. Petition for additional powers. Before the additional powers granted by this part shall become applicable to any presently existing drainage district in this state, the commissioners of such district shall file a petition in the district court requesting such additional powers as set forth herein and proper notice shall be given to interested landowners in the same manner as in the first instance of creation of the district. Proceedings shall be conducted, insofar as possible, in accordance with the procedures set forth for determining whether or not the district shall be created in the first instance, and the district court shall render its decree or order accordingly.

History: En. Sec. 3, Ch. 3, L. 1957; R.C.M. 1947, 89-2823.

85-8-704. Organization of areas not within existing districts. In areas not presently within the boundaries of an existing drainage district, the landowners may proceed to organize a drainage district for carrying out the purposes of this part, and such organization of such district may be carried out for said purposes according to the procedure for organization of such districts set forth in this chapter. After organization such districts shall have all the powers vested by law in such districts.

History: En. Sec. 4, Ch. 3, L. 1957; R.C.M. 1947, 89-2824.

Part 8
Miscellaneous Provisions

85-8-801. Continuation of existing districts. All drain districts of the state of Montana organized prior to March 1, 1921, and continued in existence pursuant to section 100, Chapter 129, Laws of 1921, shall continue their existence as drain districts under and pursuant to all of the provisions of drainage district laws, and the commissioners of such drain districts shall have all the power and authority conferred by the drainage district laws upon the commissioners of drainage districts.

History: En. Sec. 7364B by Sec. 2, Ch. 97, L. 1931; re-en. Sec. 7364.2, R.C.M. 1935; amd. Sec. 44, Ch. 460, L. 1977; R.C.M. 1947, 89-2701.

85-8-802. Dividing older districts into three divisions. Ten percent of the adult owners or legally authorized agents or representatives of minor owners of lands within any drainage district heretofore created and organized and in existence on February 27,1925, may file a petition with the proper district court to have such district divided into divisions. Such court must thereupon make an order setting a day for hearing such petition and cause a copy of such order to be served on each of the commissioners of such district at least 5 days before the date set for such hearing. On the day fixed in such order (or on any day to which such hearing may be regularly continued) the court must hear such petition and, after such hearing, must make an order dividing such district into three divisions, as nearly equal in area as possible.

History: En. Sec. 16, Ch. 129, L. 1921; re-en. Sec. 7280, R.C.M. 1921; amd. Sec. 1, Ch. 50, L. 1925; re-en. Sec. 7280, R.C.M. 1935; R.C.M. 1947, 89-2217(part).

85-8-803. Waiver of defective service. In case of failure to serve any notice of any proceeding or hearing provided for in this chapter upon any person or corporation, such person or corporation may appear in open court and waive such defect of service or may waive it by filing in court or delivering to the commissioners of the drainage district, to be filed in court, a written waiver of such defect, in which waiver said defect shall be described, which waiver shall be signed by such party and witnessed and acknowledged before a proper officer having power to take acknowledgments of deeds.

History: En. Sec. 96, Ch. 129, L. 1921; re-en. Sec. 7360, R.C.M. 1921; re-en. Sec. 7360, R.C.M. 1935; R.C.M. 1947, 89-2816; MCA 1981, 85-8-621; redes. 85-8-803 by Code Commissioner, 1983.

CHAPTER 9
CONSERVANCY DISTRICTS

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Part 1
General Provisions

85-9-101. Policy considerations. To provide for the conservation and development of the water and land resources of the state of Montana, conserve Montana's water for utilization for beneficial purposes within the state, and provide for the greatest beneficial use of water within this state, the organization of conservancy districts and the construction of works as defined by this chapter are a public use and will:

(1) be essentially for the public benefit and advantage of the people of Montana;
(2) benefit all industries of the state;
(3) encourage economic growth;
(4) indirectly benefit the state by increasing property valuations;
(5) directly benefit municipalities by providing adequate supplies of water for domestic uses;
(6) directly benefit lands irrigated or drained by works constructed;
(7) directly benefit lands now irrigated by stabilizing the flow of water in streams and by increasing the flow and return flow of water to those streams;
(8) enhance fish and wildlife habitat;
(9) improve recreational facilities; and
(10) promote the comfort, safety, and welfare of the people of Montana.

History: En. Sec. 1, Ch. 100, L. 1969; R.C.M. 1947, 89-3401.

85-9-102. Purpose of chapter. The purpose of this chapter is to enable the formation of conservancy districts comprised of area in one or more counties to promote the following purposes:

(1) prevent and control floods, erosion, and sedimentation;
(2) provide for regulation of stream flows and lake levels;
(3) improve drainage and to reclaim wet or overflowed lands;
(4) promote recreation;
(5) develop and conserve water resources and related lands, forest, fish, and wildlife resources;
(6) further provide for the conservation, development, and utilization of land and water for beneficial uses, including but not limited to domestic water supply, fish, industrial water supply, irrigation, livestock water supply, municipal water supply, recreation, and wildlife.

History: En. Sec. 2, Ch. 100, L. 1969; R.C.M. 1947, 89-3402.

Cross-References

Policy of state to conserve water, 75-5-101.

85-9-103. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Applicant" means a person residing within the boundaries of the proposed district and making a request for a study of the feasibility of forming a conservancy district.

(2) "Board of supervisors" means the board of supervisors of the soil and water conservation district in which the largest portion of the taxable valuation of real property of the proposed district is located.

(3) "Cost of works" means the cost of construction, acquisition, improvement, extension, and development of works, including financing charges, interest, and professional services.

(4) "Court" means the district court of the judicial district in which the largest portion of the taxable valuation of real property of the proposed district is located and within the county in which the largest portion of the taxable valuation of real property of the proposed district is located within the judicial district.

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Directors" means the board of directors of a conservancy district.

(7) "District" means a conservancy district.

(8) "Elector" means a person qualified to vote under 85-9-421.

(9) "Owners" means the person or persons who appear as owners of record of the legal title to real property according to the county records, whether the title is held beneficially or in a fiduciary capacity, except that a person holding a title for purposes of security is not an owner and the owner for security may not affect the previous title for purposes of this chapter.

(10) "Person" means a natural person, firm, partnership, cooperative, association, public or private corporation, including the state of Montana or the United States, foundation, state agency or institution, county, municipality, district or other political subdivision of the state, federal agency or bureau, or any other legal entity.

(11) "Taxable valuation" is the value as defined in 15-8-111 and does not mean assessed valuation.

(12) "Works" means all property, rights, easements, franchises, and other facilities, including but not limited to land, reservoirs, dams, canals, dikes, ditches, pumping units, mains, pipelines, waterworks systems, recreational facilities, facilities for fish and wildlife, and facilities to control and correct pollution.

History: En. Sec. 3, Ch. 100, L. 1969; amd. Sec. 183, Ch. 253, L. 1974; amd. Sec. 71, Ch. 566, L. 1977; R.C.M. 1947, 89-3403(part); amd. Sec. 2818, Ch. 56, L. 2009; amd. Sec. 254, Ch. 49, L. 2015.

Cross-References

Hearing by Department, 85-9-203.

Merger of districts, 85-9-501.

Notice of public budget hearing, 85-9-602.

Issuance of bonds — resolution and election, 85-9-623.

85-9-104. Limitations. (1) This chapter may not be construed to grant to the district the power to generate, distribute, or sell electrical energy.

(2) The provisions of this chapter do not abrogate or limit in any manner the rights, powers, duties, and functions of the department, conservation districts, the department of environmental quality, or the department of fish, wildlife, and parks, but are supplementary to and in aid of those rights, powers, duties, and functions.

History: (1)En. Sec. 48, Ch. 100, L. 1969; Sec. 89-3448, R.C.M. 1947; (2)En. Sec. 49, Ch. 100, L. 1969; amd. Sec. 193, Ch. 253, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 50, Ch. 460, L. 1977; Sec. 89-3449, R.C.M. 1947; R.C.M. 1947, 89-3448, 89-3449; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 480, Ch. 418, L. 1995; amd. Sec. 77, Ch. 7, L. 2001.

Part 2
Creation of Districts

85-9-201. Preliminary survey — petition. (1) To request a preliminary survey for a proposed conservancy district, the applicants shall present a written petition to the department.

(2) The petition shall:

(a) be signed by at least 10% of the registered voters residing within the boundaries of the proposed conservancy district;

(b) generally describe the proposed boundaries of the district;

(c) specify the purpose or purposes of the district;

(d) list the works contemplated;

(e) request that a preliminary survey be initiated.

(3) The department may initiate a preliminary survey without any prior written petition.

History: En. Sec. 4, Ch. 100, L. 1969; amd. Sec. 1, Ch. 19, L. 1973; R.C.M. 1947, 89-3404.

85-9-202. Action by department upon receipt of request. (1) Within 11 days after the request is received, the department shall acknowledge the request.

(2) The department shall itself, through cooperating agencies, or together with cooperating agencies:

(a) consult with the board of supervisors and all persons who may participate in the proposed project;

(b) conduct a preliminary survey of the proposed district;

(c) estimate costs of works, maintenance, and operation;

(d) determine sources of financing;

(e) reach a tentative decision on the feasibility, desirability, and compatibility with the state water plan of the proposed district;

(f) adjust the boundaries of the proposed district to improve the feasibility, desirability, or consistency with the state water plan;

(g) within 1 year after receipt of the request, send a report of the preliminary survey to the applicants, the board of supervisors, the department of fish, wildlife, and parks, the department of environmental quality, and other affected state and federal resource agencies for their comments.

History: En. Sec. 5, Ch. 100, L. 1969; amd. Sec. 1, Ch. 302, L. 1971; amd. Sec. 184, Ch. 253, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 89-3405; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 481, Ch. 418, L. 1995.

85-9-203. Hearing by department. (1) On receipt of the preliminary survey report, the applicants or any one of them may request the department to hold a hearing. The department shall provide notice as required in 7-1-2121 and then hold the hearing no later than than 61 days after receipt of the request.

(2) If the department itself initiated the preliminary survey, it may hold a hearing without being requested to do so.

History: En. Sec. 6, Ch. 100, L. 1969; amd. Sec. 185, Ch. 253, L. 1974; R.C.M. 1947, 89-3406; amd. Sec. 255, Ch. 49, L. 2015.

85-9-204. Feasibility study and report — adjustment of proposed boundaries. After the hearing, the applicants or any one of them may request the department to prepare a detailed feasibility study of the proposed district. If the department concludes that the proposed district is feasible, desirable, and consistent with the state water plan, it shall prepare a feasibility report and, within 1 year after receipt of the request, send copies to the applicants, if any, the department of fish, wildlife, and parks, the department of environmental quality, and other affected state and federal water resource agencies. For good cause shown, based upon the actual technical problems in completing the report, the department may use necessary additional time to complete and distribute the report. The detailed feasibility report must describe the proposed works and contain an estimate of the cost of the works, the means of financing, and the estimated costs of operation and maintenance. The department may adjust the boundaries of the proposed district to improve the feasibility, desirability, and consistency with the state water plan and to exclude land that would receive no direct or indirect benefits from the proposed district.

History: En. Sec. 7, Ch. 100, L. 1969; amd. Sec. 1, Ch. 303, L. 1971; amd. Sec. 186, Ch. 253, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 89-3407; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 482, Ch. 418, L. 1995.

85-9-205. Procedure for organization of district. If in the opinion of the department the feasibility study shows that a district is feasible and consistent with the state water plan, the procedure for organization is the following:

(1) The department shall file a petition requesting organization with the court.

(2) The petition shall:

(a) state the name of the proposed district;

(b) give a legal description of the boundaries of the proposed district, excluding therefrom lands which would receive no direct or indirect benefits from the proposed district;

(c) describe the purposes of the district;

(d) describe the works;

(e) indicate the estimated cost of works, means of financing, and estimated costs of operation and maintenance;

(f) list the taxable valuation of real property in the proposed district, which must be $100,000 or more;

(g) describe the means of repaying capital costs;

(h) propose the persons who should be represented and the number of directors.

(3) The petition shall be signed by owners of at least 51% of the land outside the limits of an incorporated municipality and not fewer than 5% or 100, whichever is the lesser, of the persons who would qualify as electors within an incorporated municipality.

History: En. Sec. 8, Ch. 100, L. 1969; amd. Sec. 187, Ch. 253, L. 1974; R.C.M 1947, 89-3408.

85-9-206. Court hearing on petition — election — limits on court jurisdiction. (1) On receipt of a petition for organizing a district, the court shall give notice and hold a hearing on the petition. If the court finds that the petition should be granted, it shall:

(a) make and file findings of fact specifying those lands that will be directly or indirectly benefited by the proposed district and exclude those lands that will not be benefited;

(b) make an order fixing the time and place of an organizing election;

(c) order the election administrator to conduct the election in accordance with Title 13, chapter 1, part 5; and

(d) order and decree the district organized if the requisite number of eligible electors votes in favor of organization.

(2) In order for the district to be organized, 51% or more of the eligible electors must vote in the election, and a majority of those voting must vote in favor of organization.

(3) This chapter does not confer on the court jurisdiction to hear, adjudicate, and settle questions concerning the priority of appropriation of water between districts and other persons. Jurisdiction to hear and determine priority of appropriation and questions of right growing out of or in any way connected with a priority of appropriation is expressly excluded from this chapter and must be determined as otherwise provided by the laws of Montana.

History: En. Sec. 9, Ch. 100, L. 1969; R.C.M. 1947, 89-3409; amd. Sec. 373, Ch. 571, L. 1979; amd. Sec. 69, Ch. 387, L. 1995; amd. Sec. 14, Ch. 234, L. 1997; amd. Sec. 256, Ch. 49, L. 2015.

85-9-207. Corporate nature of district. A district is a public corporation and a political subdivision of the state.

History: En. Sec. 3, Ch. 100, L. 1969; amd. Sec. 183, Ch. 253, L. 1974; amd. Sec. 71, Ch. 566, L. 1977; R.C.M. 1947, 89-3403(part).

85-9-208. Filing of documents after organization. Sooner than 31 days after the district has been decreed organized, the clerk of the court shall transmit to the secretary of state, the department, and to the county clerk and recorder in each of the counties having lands in the district copies of the election results, the decree of the court incorporating the district, and a description of the boundaries of the district. Copies of the same documents shall be filed in the office of the secretary of state in the same manner as articles of incorporation are required to be filed under the laws governing corporations. Copies shall also be filed in the office of the county clerk and recorder of each county in which a part of the district may be. The clerk and recorder of each county where the articles are filed and the secretary of state shall collect filing fees as provided by law.

History: En. Sec. 10, Ch. 100, L. 1969; amd. Sec. 188, Ch. 253, L. 1974; R.C.M. 1947, 89-3410.

85-9-209. Reimbursement of expenses of organizing election. If organized, the district shall reimburse the county or counties for the expenses incurred in the organizing election. The costs of conducting the preliminary and feasibility studies shall be considered costs of construction of an approved project and shall be included in determination of the repayment schedules by the directors of the district.

History: En. Sec. 11, Ch. 100, L. 1969; amd. Sec. 1, Ch. 18, L. 1973; R.C.M. 1947, 89-3411.

Part 3
Dissolution of Districts

85-9-301. Procedure for dissolution of district. (1) The procedure for dissolution of a district is:

(a) a resolution shall be passed by the directors requesting dissolution;

(b) a petition signed by 20% of the electors representing 10% of the taxable valuation of real property in the district shall be presented to the directors; or

(c) if the district or its directors have been inactive for 1 year or more, any elector may present a petition.

(2) The resolution or petition shall be presented to the court by the directors or by the petitioners if the directors remain inactive.

(3) Not more than one resolution or petition may be presented to the court in any 24-month period, and no such petition may be presented during the first 24 months after a district's initial organization.

History: En. Sec. 42, Ch. 100, L. 1969; R.C.M. 1947, 89-3442.

85-9-302. Dissolution election. (1) After receipt of petition or resolution for dissolution, the court shall order an election to be conducted in accordance with Title 13, chapter 1, part 5.

(2) For dissolution to be approved, a majority of the electors voting must favor dissolution.

History: En. Sec. 43, Ch. 100, L. 1969; R.C.M. 1947, 89-3443; amd. Sec. 257, Ch. 49, L. 2015.

85-9-303. Termination plan — court jurisdiction. (1) In the event the vote is for dissolution, any qualified elector or the board of directors of the district may, within the time fixed by the court, present a written plan for terminating the affairs of the district which shall include assignment of any water rights and works owned by the district.

(2) The plan may specify that the affairs of the district shall be terminated by the directors or by a receiver appointed by the court.

(3) On a day fixed by the court, the court shall consider the plan or plans and shall enter an order establishing a plan for the termination of the affairs.

(4) The court shall retain jurisdiction to modify the plan and shall supervise the termination.

History: En. Sec. 44, Ch. 100, L. 1969; R.C.M. 1947, 89-3444.

85-9-304. Appointment of receiver — assessments. (1) If a plan is not presented on or before the date set by the court, the court shall appoint a receiver to terminate the affairs of the district under the supervision of the court.

(2) Upon the appointment of a receiver, all authority of the directors ceases. However, until dissolution, the receiver has authority to levy assessments for:

(a) the payment of obligations of the district; and

(b) the costs of termination.

(3) The directors or, if there is a receiver, the receiver, with the approval of the court, shall make assessments each year in an amount large enough to retire the obligations of the district.

(4) If a receiver has been appointed, the receiver shall direct, under court supervision, the disposition of all assessments collected.

History: En. Sec. 45, Ch. 100, L. 1969; R.C.M. 1947, 89-3445; amd. Sec. 2819, Ch. 56, L. 2009.

85-9-305. Entry of dissolution order. (1) The court shall enter an order dissolving the district when it appears to the satisfaction of the court that:

(a) all obligations of the district have been discharged;

(b) all the costs of termination have been paid.

(2) A certified copy of the order shall be recorded by the clerk of the court in all counties in which the district was situated and filed with the secretary of state.

History: En. Sec. 46, Ch. 100, L. 1969; R.C.M. 1947, 89-3446.

85-9-306. County general funds to receive funds remaining after dissolution. All funds remaining after dissolution of a district shall be deposited in the general fund of the counties in which the district is located in proportion to the taxable value of property within the district in each county.

History: En. Sec. 47, Ch. 100, L. 1969; R.C.M. 1947, 89-3447.

Part 4
Organization and Procedure

85-9-401. District directors — appointment, term of office, vacancies, first meeting, and bond. If a district is organized, the court shall:

(1) establish by court order the number of persons who shall comprise the directors and appoint persons who are electors within the district to membership on the board of directors and fix their compensation. The number may not be less than 3 or more than 11 persons. In fixing the number and making the appointments, the court shall consider the interests and purposes to be served by the district. Upon a verified petition filed by a majority of the directors and for good cause shown, the court may enlarge or reduce the membership of the directors but not to be less than 3 or more than 11.

(2) fix the terms of office so that approximately one-third of the directors first appointed serve for 1 year, approximately one-third serve 2 years, and the remainder serve 3 years. All succeeding terms must be 3 years. Unless excused for good cause, a director who misses three consecutive regular meetings has vacated the position.

(3) fill all vacancies on the board by appointment or reappointment;

(4) specify a date for the first annual meeting of the directors;

(5) specify the amount and form of a corporate surety bond that each member of the directors shall furnish at the expense of the district, conditioned upon the faithful performance of duties as a director.

History: En. Sec. 12, Ch. 100, L. 1969; R.C.M. 1947, 89-3412; amd. Sec. 2820, Ch. 56, L. 2009.

85-9-402. Officers and meetings. (1) The directors shall select from among themselves a presiding officer, vice presiding officer, secretary, and other necessary officers. The directors shall adopt bylaws and rules for the conduct of meetings. All official acts of the directors must be entered in a book of minutes to be kept by the secretary.

(2) The directors shall establish times for regular meetings and may hold special meetings upon the call of the presiding officer or any two members and, except in case of emergency, upon at least 3 days' notice of the time, place, and purpose of the meeting.

History: En. Sec. 13, Ch. 100, L. 1969; R.C.M. 1947, 89-3413; amd. Sec. 2821, Ch. 56, L. 2009.

85-9-403. Directors' powers — conduct of business. On behalf of the district, the directors may:

(1) adopt an official seal;

(2) sue and be sued;

(3) provide for reimbursing of their members for actual expenses;

(4) merge with other special districts as hereinafter provided;

(5) call upon the county attorney or attorney general for such legal services as the district may require or, in the discretion of the directors, employ private legal counsel.

History: En. Sec. 14, Ch. 100, L. 1969; R.C.M. 1947, 89-3414(1), (2), (5), (9), (11).

85-9-404. Directors' powers to adopt rules. On behalf of the district, the directors may adopt rules to promote and encourage water recreation, including requirements concerning public access areas and facilities, and rules respecting the use of reservoirs and waters, picnic sites, and other recreational areas operated by the district. Rules adopted shall be filed with the secretary of directors and shall be available to any interested party upon reasonable request.

History: En. Sec. 14, Ch. 100, L. 1969; R.C.M. 1947, 89-3414(3).

85-9-405. Directors' powers over property. On behalf of the district, the directors may:

(1) enter private property for the purposes of making surveys, provided that just compensation for actual damages is made;

(2) appropriate water and initiate or participate in the adjudication of streams;

(3) acquire, undertake, construct, develop, improve, maintain, and operate works and all incidental facilities;

(4) acquire by purchase, exchange, gift, lease, grant, devise, or otherwise lands, water, water rights, or rights-of-way as necessary for the execution of any authorized function of the district. Title to all property (including water rights) shall be in the name of the district.

(5) hold and dispose of property as necessary or convenient in the performance of the functions of the district;

(6) allocate or reallocate unused waters of the district.

History: **En. Sec. 14, Ch. 100, L. 1969; R.C.M. 1947, 89-3414(4), (6) thru (8), (10), (18).**

85-9-406. Directors' powers over finance. On behalf of the district, the directors may:

(1) borrow money and incur indebtedness and issue bonds to finance works as provided by this chapter;

(2) in addition to all voted indebtedness, borrow money as necessary, but the amount may not at any one time exceed 0.23% of the total assessed value of taxable real property, determined as provided in 15-8-111, within the district, as ascertained by the last assessment for state and county taxes prior to the issuance of the bonds;

(3) mortgage property owned by the district if the terms of the mortgage are not inconsistent with the provisions of a resolution authorizing the sale of bonds;

(4) use any surplus funds to purchase outstanding bonds;

(5) refund bonded indebtedness incurred by the district as provided by this chapter;

(6) after a hearing held in accordance with 85-9-602, make assessments sufficient to meet the budgetary requirements for the coming year.

History: **En. Sec. 14, Ch. 100, L. 1969; R.C.M. 1947, 89-3414(13) thru (15), (22) thru (24); amd. Sec. 32, Ch. 29, L. 2001.**

85-9-407. Fees and charges. On behalf of the district, the directors may:

(1) fix and revise, from time to time, and collect rates, fees, and other charges for the services, facilities, or water furnished by the district to any person;

(2) withhold the delivery of water upon which there are any defaults or delinquencies of payment and otherwise dispose of that water while the default or delinquency continues.

History: **En. Sec. 14, Ch. 100, L. 1969; R.C.M. 1947, 89-3414(12), (17).**

Cross-References

Assessments, 85-9-601.

85-9-408. Contracts and agreements by directors. On behalf of the district, the directors may:

(1) contract for service, for water furnished, or for the sale of water with any person;

(2) cooperate with; accept grants, loans, and other assistance from; act as agent for; and enter into agreements with any and all state or federal agencies and exercise all necessary or convenient powers in connection therewith;

(3) enter into any obligation or contract with an agency of the federal government for the construction, operation, and maintenance of works or for the assumption as principal or guarantor of indebtedness to the United States on account of district lands under the provisions of the federal reclamation act and rules established under that act or contract with an agency of the federal government for a water supply under any federal act providing for or permitting such a contract. However, the action must be approved by a majority of the electors voting at an election conducted in accordance with Title 13, chapter 1, part 5. If a contract is made with an agency of the federal government, the directors may deposit bonds of the district with the United States at 90% of their par value to secure the amount to be paid by the district to the United States under any contract. The interest on the bonds of the district to be applied as specified by the contract. If bonds of the district are deposited with the United States, it is the duty of the directors to make an assessment sufficient to meet all payments accruing under the terms of any contract with the United States.

(4) accept appointment of the district as fiscal agent for the United States or authorization of the district to make collections of moneys for or on behalf of the United States in connection with any federal reclamation projects, and the district is authorized to act and to assume the duties and liabilities incident to this action. However, the action must be approved by a majority of the electors voting at an election conducted in accordance with Title 13, chapter 1, part 5. The directors may do all things required by federal statutes and rules and require prompt payment of all charges as a prerequisite to water service.

(5) make contracts incidental to the performance of the district's functions and employ and fix the compensation of employees, agents, or consultants as are deemed necessary, including

but not limited to a manager, attorneys, accountants, engineers, construction and financial experts; or

(6) cooperate with soil and water conservation districts to obtain agreements to carry out soil conservation measures and proper farm plans from owners of lands situated in the drainage area above each retention reservoir to be installed with federal assistance.

History: En. Sec. 14, Ch. 100, L. 1969; R.C.M. 1947, 89-3414(16), (19) thru (21), (25), (26); amd. Sec. 258, Ch. 49, L. 2015.

85-9-409. Participation in federal programs. A district organized under this chapter, by itself or in conjunction with others as a sponsoring organization, may participate in all federal programs, including but not limited to the Watershed Protection and Flood Prevention Act of 1954 (68 Stat. 666), the federal Water Project Recreation Act of 1965 (79 Stat. 213), the federal Reclamation Act of 1902 (32 Stat. 388), and amendments to those acts.

History: En. Sec. 15, Ch. 100, L. 1969; amd. Sec. 189, Ch. 253, L. 1974; R.C.M. 1947, 89-3415.

85-9-410. Condemnation authorized. The district may exercise the right of eminent domain, as provided in Title 70, chapter 30, when the taking is necessary for the purposes of the district. Water rights are not subject to taking but may be taken as an incident to the condemnation of land to which the water rights are appurtenant when the taking of the land is the principal purpose of the condemnation.

History: En. Sec. 20, Ch. 100, L. 1969; R.C.M. 1947, 89-3420; amd. Sec. 108, Ch. 125, L. 2001.

Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.; Title 70, ch. 30.

85-9-411. Annual report of directors' activities. Before August 1 of each year, the directors shall send a written report of their activities during the previous fiscal year to the court and to the department. Reports shall be in the form and contain the information prescribed by the department.

History: En. Sec. 21, Ch. 100, L. 1969; amd. Sec. 190, Ch. 253, L. 1974; R.C.M. 1947, 89-3421.

85-9-412 through 85-9-420 reserved.

85-9-421. Persons entitled to vote. (1) Only persons who are taxpayers upon and owners of real property located within the district and whose names appear upon the last-completed assessment roll of some county within the district for state, county, and school district taxes are electors and are entitled to vote in elections, provided that:

(a) an elector need not reside within the district in order to vote;

(b) when a corporation owns taxable real property within the boundaries of the conservancy district, the authorized agent of the corporation is entitled to cast a vote on behalf of the corporation;

(c) when land is under contract of sale to a purchaser and the contract is recorded, only the purchaser has the right to vote;

(d) guardians, executors, administrators, and trustees of real property within the district are entitled to cast the vote for the owner of the land.

(2) When voting, an agent of a corporation or of co-owners or a guardian, executor, administrator, trustee, or purchaser under contract of sale may be required to show the person's authority by the judges of the election.

History: En. Sec. 23, Ch. 100, L. 1969; R.C.M. 1947, 89-3423; amd. Sec. 2822, Ch. 56, L. 2009.

Cross-References

Definitions, 85-9-103.

85-9-422. Repealed. Sec. 262, Ch. 49, L. 2015.

History: En. Sec. 24, Ch. 100, L. 1969; R.C.M. 1947, 89-3424; amd. Sec. 374, Ch. 571, L. 1979.

85-9-423. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 25, Ch. 100, L. 1969; amd. Sec. 49, Ch. 460, L. 1977; R.C.M. 1947, 89-3425.

Part 5
Alteration of Districts

85-9-501. Merger of districts. (1) In case two or more districts have been organized in a territory that, in the opinion of the directors of each of the districts, should constitute but one district, the directors of the districts may petition the court for an order merging the districts into a single district. The petition must be filed in the office of the clerk of the district court in and for that county which has the largest portion of taxable valuation of property within the districts sought to be included, as shown by the tax rolls of the respective counties. The petition shall set forth facts showing that the purposes of this chapter would be served by the merging of the districts and that the merger would promote the economical execution of the purposes for which the districts were organized. A copy of the petition must be filed with the department.

(2) Upon the filing of the petition, the court shall by order fix a time and place of hearing, and the clerk shall give notice as provided in 7-1-2121 and also notify by mail the directors of the districts that would be merged. The notice must contain the purpose, time, and the place of the hearing.

(3) Upon the hearing, if the court finds that the averments of the petition are true and that the districts or any of them could feasibly and profitably be merged, it shall order that the merger must take place and the districts must be merged into one district and proceed as such. The court shall designate the corporate name of the district, and further proceedings must be taken as provided for in this chapter. The court shall by order appoint the directors of the district, who shall thereafter have powers and be subject to rules as are provided for directors in districts created in the first instance.

(4) Instead of organizing a new district from the constituent districts, the court may, in its discretion, direct that one or more of the districts described in the petition be included in another of the districts, which other shall continue under its original corporate name and organization, or the court may direct that the district or districts so absorbed must be represented on the directors of the original districts, designating what members of the directors of the original district shall retire from the new board and what members representing the included district or districts shall take their places.

(5) If the court receives a petition opposing the merger, signed by a majority of the electors of any of the concerned districts, the court shall not grant the order and shall dismiss the petition.

(6) Upon merger or inclusion, existing obligations shall remain exclusively with those who bore them prior to the merger or inclusion, except with the written consent, given prior to the merger or inclusion, of those who did not bear the obligations.

History: En. Sec. 38, Ch. 100, L. 1969; amd. Sec. 192, Ch. 253, L. 1974; R.C.M. 1947, 89-3438; amd. Sec. 259, Ch. 49, L. 2015.

85-9-502. Annexation of property. (1) To annex real property to the district, the procedure is as follows:

(a) The directors shall petition the court.

(b) The petition must:

(i) give a general description of the real property to be annexed sufficient to enable a person to determine if the person's property is in the proposed annexation; and

(ii) describe the benefits to accrue to the real property as a result of the annexation.

(2) The court shall:

(a) give notice and hold a hearing on the petition; and

(b) upon good cause shown, order or deny the annexation.

History: En. Sec. 39, Ch. 100, L. 1969; R.C.M. 1947, 89-3439; amd. Sec. 2823, Ch. 56, L. 2009.

85-9-503. Preannexation bonds. Real property annexed to a district shall not incur any liens by reason of bonds issued before annexation unless agreed to by the owners of the annexed property, in writing, prior to annexation.

History: En. Sec. 40, Ch. 100, L. 1969; R.C.M. 1947, 89-3440.

85-9-504. Procedure to exclude lands. Any territory included within a district formed under the provisions of this chapter and not benefited in any manner by the district or its inclusion in the district may be excluded from the district. The procedure for exclusion consists of the following:

(1) A petition for exclusion must be initiated by either the directors or the owner or owners of the land sought to be excluded.

(2) The petition must:

(a) give a description of the territory sought to be excluded sufficient to enable a person to determine if the person's property is in the proposed exclusion;

(b) set forth that the territory is not benefited in any manner by the district or its continued inclusion in the district; and

(c) request that the territory be excluded from the district.

(3) When owners of property initiate the petition for exclusion, the petition must be filed with the secretary of the district and must be accompanied by a deposit of $100 to meet the costs incident to the process of exclusion. The unexpended balance of the deposit must be returned to the petitioner.

(4) Upon the filing of the petition with the secretary of the district, the secretary shall call a meeting of the directors to consider the petition. The directors shall approve or disapprove of the merits of the petition. The secretary shall then file the petition, together with a copy of the action of the directors, with the court.

(5) The court shall give notice, hold a hearing, and issue an order either granting or denying the petition.

History: En. Sec. 41, Ch. 100, L. 1969; R.C.M. 1947, 89-3441; amd. Sec. 2824, Ch. 56, L. 2009.

Part 6
Finance

85-9-601. Assessments. (1) To the extent that anticipated revenues from rates, fees, and other charges fixed pursuant to 85-9-407(1) will not be sufficient to meet the district's anticipated obligations for annual operation, maintenance, and replacement or depreciation of works or for payment of the interest and principal on bonded indebtedness, the directors may make an assessment of not more than 2 mills on all taxable real property in the district for the purpose of fully meeting such obligations.

(2) In addition to the assessment authorized by subsection (1), the directors may annually make an assessment of up to 3 mills on the taxable real property in the district to pay interest and principal on bonded indebtedness.

(3) The assessments are a lien upon each lot or parcel of land within the district to the extent of the assessment on each.

(4) All assessments have the same force and effect as other liens for taxes, and their collection shall be enforced in the way provided for enforcement of liens for county taxes. Assessments, if not paid, become delinquent at the same time as county taxes.

(5) Except as provided in 85-9-624, approval of the electors is not required for the making of these assessments.

History: En. Sec. 16, Ch. 100, L. 1969; R.C.M. 1947, 89-3416.

85-9-602. Notice of public budget hearing. (1) The directors shall, prior to the first Monday in May of each year, give notice in accordance with 7-1-2121 of the intention to hold a public budget hearing. The notice shall include the date, time, place, and general agenda.

(2) At the hearing, the directors shall:

(a) review the present budget;

(b) present the budget for the next year;

(c) hear and consider protests from any elector;

(d) adopt the budget for the next year; and

(e) set the assessment for the next year.

History: En. Sec. 17, Ch. 100, L. 1969; R.C.M. 1947, 89-3417; amd. Sec. 260, Ch. 49, L. 2015.

Cross-References

Directors' powers over finance, 85-9-406.

85-9-603. Directors to provide financial information. (1) Before the first Monday in August of each year, the directors shall provide the department of revenue and the county treasurer with:

(a) the budget for the current fiscal year;

(b) a statement of the amount of special assessments to be collected for the districts; and

(c) a listing of all real property within the district.

(2) If the district is located in more than one county, the directors shall provide this information to the department of revenue and each of the affected county treasurers.

History: En. Sec. 18, Ch. 100, L. 1969; R.C.M. 1947, 89-3418; amd. Sec. 156, Ch. 27, Sp. L. November 1993; amd. Sec. 7, Ch. 34, L. 2003.

85-9-604. Collection and investment of assessments. (1) The treasurer of each county in which the district is located shall collect special assessments at the same time and in the same way as county taxes.

(2) If the district is located in more than one county, all assessments collected must be deposited with the treasurer of the county in which the assessments were collected.

(3) The directors shall direct the county treasurer to invest any surplus district funds in saving or time deposits in a state or national bank, savings and loan association, or credit union insured by the federal deposit insurance corporation or the national credit union administration or to invest in direct obligations of the United States government payable within 180 days from the time of investment. All interest collected on the deposits or investments must be credited to the fund from which the money was withdrawn. However, 5% of the interest must be deposited in the general fund of the county.

History: En. Sec. 19, Ch. 100, L. 1969; R.C.M. 1947, 89-3419; amd. Sec. 17, Ch. 421, L. 1985; amd. Sec. 81, Ch. 10, L. 1993.

85-9-605 through 85-9-610 reserved.

85-9-611. Repealed. Sec. 13, Ch. 179, L. 1995.

History: En. Sec. 22, Ch. 100, L. 1969; amd. Sec. 191, Ch. 253, L. 1974; amd. Sec. 53, Ch. 213, L. 1975; R.C.M. 1947, 89-3422; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.

85-9-612 through 85-9-620 reserved.

85-9-621. Issuance of bonds — term and multipurpose bonds. A district may issue bonds payable from revenues, assessments, or both, or the district may use other financing as provided by this chapter for the cost of works. Bonds issued shall be for a maximum term of not to exceed 40 years. Bonds for more than one purpose may be sold as a single issue.

History: En. Sec. 26, Ch. 100, L. 1969; amd. Sec. 43, Ch. 234, L. 1971; R.C.M. 1947, 89-3426.

85-9-622. Issuance of bonds — determination of amount. In determining the amount of bonds to be issued, the directors may include:

(1) all costs of works;

(2) all costs and estimated costs of issuance of the bonds;

(3) interest which they estimate will accrue on money borrowed during the construction period and for 6 months after the period.

History: En. Sec. 27, Ch. 100, L. 1969; R.C.M. 1947, 89-3427.

85-9-623. Issuance of bonds — resolution and election. When the directors find it necessary to issue bonds, the directors shall:

(1) pass a resolution that includes:

(a) the purpose or purposes for which the bonds will be issued;

(b) the maximum amount and term of the bonds;

(c) the maximum interest rate that the bonds will bear; and

(d) whether the bonds will be repaid from revenue, assessments, or both;

(2) give notice in accordance with 7-1-2121 that must include the resolution adopted by the directors and the location of polling places unless the election is conducted by mail ballot, as provided in Title 13, chapter 19; and

(3) hold an election conducted in accordance with Title 13, chapter 1, part 5.

History: En. Sec. 28, Ch. 100, L. 1969; R.C.M. 1947, 89-3428; amd. Sec. 70, Ch. 387, L. 1995; amd. Sec. 15, Ch. 234, L. 1997; amd. Sec. 261, Ch. 49, L. 2015.

85-9-624. Issuance of bonds — approval and assessments. (1) For a bond issue to be approved, 40% of the qualified electors must vote thereon and 60% of those voting must approve the issue.

(2) Approval of the bond issue shall authorize the directors to make assessments necessary to pay the principal and interest on bonds issued, as provided in 85-9-601.

(3) The directors shall enter the results of the election in their records.

(4) If otherwise fairly conducted, no irregularities or informalities shall invalidate the election.

(5) Bonds for more than one purpose may be submitted to the electors as a single proposition.

History: En. Sec. 29, Ch. 100, L. 1969; R.C.M. 1947, 89-3429.

85-9-625. Issuance of bonds — details of sale. (1) If a bond issue is approved, the directors shall by resolution provide for the form and execution of the bonds and for issuance of all or any part of the bonds. The bonds may be sold at public or private sale as determined by the directors pursuant to 17-5-107. If the directors conduct a public sale, after adequate notice that sealed proposals will be received, the directors may award the purchase of all or a part of the issue to the best bidder or bidders and may sell at private sale any or all bonds not sold on bids.

(2) The bonds must be sold for a price that is not less than 97% of par or face value with accrued interest to date of delivery, and all bidders shall state the lowest rate of interest at which they will purchase the bonds. The board shall reserve the right to reject any and all bids and to sell the bonds at private sale.

History: En. Sec. 30, Ch. 100, L. 1969; R.C.M. 1947, 89-3430; amd. Sec. 31, Ch. 253, L. 2011.

85-9-626. Tax exempt status. Bonds issued under this chapter have the same force, value, and use as bonds issued by a municipality and are exempt from taxation as property within the state of Montana.

History: En. Sec. 31, Ch. 100, L. 1969; R.C.M. 1947, 89-3431.

85-9-627. Interim receipts — negotiability. Pending preparation of the bonds sold under this chapter, receipts or certificates may be issued to purchasers in the form and with provisions as determined by the directors. Bonds and interim receipts or certificates are fully negotiable as provided by the Uniform Commercial Code—Investment Securities.

History: En. Sec. 32, Ch. 100, L. 1969; R.C.M. 1947, 89-3432.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

85-9-628. Bond registration — copy to county. (1) When duly executed, all bonds issued under this chapter must be registered by the county treasurer of the county in which the largest portion of the taxable valuation of real property of the district is located. The bonds must be registered in a book provided for that purpose before being delivered to the purchaser.

(2) The registration must show:

(a) the number and amount of each bond;

(b) the date of issue and date redeemable;

(c) the name of the purchaser;

(d) the amount and due date of all payments required on the bonds.

(3) The directors shall provide the county treasurer with an unsigned and canceled printed copy of each issue of bonds of the district. The copy must be preserved in the treasurer's office.

History: En. Sec. 33, Ch. 100, L. 1969; R.C.M. 1947, 89-3433; amd. Sec. 2825, Ch. 56, L. 2009.

85-9-629. Disposition and investment of sale proceeds. (1) Proceeds from the sales of bonds must be deposited with the county in which the largest portion of the taxable valuation of real property of the district is located.

(2) The county treasurer shall place the proceeds of the bond sale to the credit of the district. The proceeds must be paid by the county treasurer on written order of the directors. Proceeds may only be spent for the purposes for which the bonds were issued.

(3) The directors shall instruct the county treasurer to deposit any part of the proceeds that is not immediately needed for the purpose for which the bonds were issued in a saving or time deposit in a state or national bank, savings and loan association, or credit union insured by the federal deposit insurance corporation or the national credit union administration or to invest in direct obligations of the United States government. The obligations must be payable within not to exceed 180 days from the time of deposit or investment.

History: En. Sec. 34, Ch. 100, L. 1969; R.C.M. 1947, 89-3434; amd. Sec. 18, Ch. 421, L. 1985; amd. Sec. 82, Ch. 10, L. 1993.

85-9-630. Refunding bonds. (1) Refunding bonds may be issued in the same way as any other bonds authorized by this chapter.

(2) All bonds, original issue or refunding issue, shall be redeemable when one-half of the term or 10 years of the term for which they were issued, whichever may be the less, has expired. Redemption may be made on any interest due date of any bond prior to its maturity after the bond shall be subject to redemption as herein provided. The right of redemption, as herein provided, must be stated on the face of each bond.

History: En. Sec. 35, Ch. 100, L. 1969; R.C.M. 1947, 89-3435.

85-9-631. Bond retirement fund. Revenue, assessment, and other funds on hand, including reserves pledged for the payment and security of outstanding bonds, may be deposited in a fund created for the retirement of bonds and may be invested and disbursed as provided by this chapter, to the extent consistent with the resolution authorizing the outstanding bonds.

History: En. Sec. 36, Ch. 100, L. 1969; R.C.M. 1947, 89-3436.

85-9-632. Revolving funds. (1) The directors by resolution may establish revolving funds to finance, on a reimbursable basis:

(a) construction, purchase, lease, and operation of revenue-producing works;

(b) contracts to provide services or facilities.

(2) Money in the revolving fund shall not be spent for any purposes other than those specified in the resolution. However, excess money may be transferred to any sinking and interest fund of the district.

(3) The county treasurer of the county having the largest portion of the taxable valuation of real property of the district shall maintain a separate account for each revolving fund of the district, and all money collected under the resolution shall be deposited with the county treasurer.

History: En. Sec. 37, Ch. 100, L. 1969; R.C.M. 1947, 89-3437.

CHAPTERS 10 THROUGH 14 RESERVED

CHAPTER 15

DAM SAFETY ACT

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85-15-503. Civil penalty.

Part 1
General Provisions

85-15-101. Renumbered 85-15-207. Code Commissioner, 1985.

85-15-102. Renumbered 85-15-208. Code Commissioner, 1985.

85-15-103. Repealed. Sec. 23, Ch. 501, L. 1985.

History: En. Sec. 2, Ch. 370, L. 1971; amd. Sec. 2, Ch. 209, L. 1973; amd. Sec. 2, Ch. 335, L. 1975; R.C.M. 1947, 89-702.1.

85-15-104. Renumbered 85-15-107. Code Commissioner, 1985.

85-15-105. Short title. This chapter may be cited as the "Montana Dam Safety Act".

History: En. Sec. 1, Ch. 501, L. 1985.

85-15-106. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Alterations" or "repairs" means alterations or repairs that may directly affect the safety of a dam or reservoir.

(2) "Appurtenant works" means all works incident or attached to a dam or reservoir, including but not limited to:

(a) a spillway, either in the dam or separate from it;

(b) the reservoir and its rim;

(c) a low-level outlet; and

(d) a water conduit such as a tunnel, pipeline, or penstock, either through the dam or its abutments.

(3) "Construction" or "construct" includes construction, alteration, repair, enlargement, or removal of a dam or reservoir.

(4) "Dam" means an artificial barrier, including appurtenant works, used to impound or divert water.

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Emergency" means a threat to life caused by the condition of a dam or reservoir or by present or imminent floods that threaten the structural integrity of any dam or reservoir.

(7) "Engineer" means a registered professional engineer licensed to practice in the state of Montana under Title 37, chapter 67, part 3.

(8) "Enlargement" means a change in or addition to an existing dam or reservoir that raises or may raise the water storage elevation or increases the impoundment capacity of the reservoir.

(9) "High-hazard dam" means a dam or reservoir with an impounding capacity of 50 acre-feet or more at the maximum normal operating pool, the failure of which would be likely to cause loss of life.

(10) "Inspection" means a visual or mechanical check, a measurement, a boring, or any other method necessary for determination of the adequacy of construction techniques, conformity of work with approved plans and specifications, or the safety and operating performance of a dam or reservoir.

(11) "Owner" means a person who owns, controls, operates, maintains, manages, or proposes to construct a dam or reservoir.

(12) "Person" means an individual, association, partnership, corporation, business trust, state agency, political subdivision, utility, municipal or quasi-municipal corporation, or other entity or authorized agent, lessee, or trustee of any of the foregoing.

(13) "Removal" means removing, taking down, or changing the location of a dam or reservoir.

(14) "Reservoir" means a valley, basin, coulee, ravine, or other land area that contains impounded water.

History: En. Sec. 2, Ch. 501, L. 1985; amd. Sec. 1, Ch. 366, L. 1991; amd. Sec. 1, Ch. 418, L. 1993.

85-15-107. Exemptions. (1) The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-502, and 85-15-503 do not apply to:

(a) dams subject to a permit issued pursuant to 82-4-335 for the period during which the dam is subject to the permit;

(b) federal dams and reservoirs;

(c) dams and reservoirs licensed and subject to inspection by the federal energy regulatory commission; or

(d) dams that are required to obtain a certificate of compliance pursuant to 75-20-201 for the period during which the dam is subject to the certificate.

(2) The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-401, 85-15-502, and 85-15-503 do not apply to nonfederal dams and reservoirs located on federal lands if they are subject to a dam safety review by a federal agency.

(3) The provisions of 85-15-305 do not apply to dams and reservoirs at a national priority list site as defined by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Public Law 96-510.

(4) The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-401, 85-15-502, and 85-15-503 do not apply to dams used for a public sewage system or a public sewage disposal system as regulated by the department of environmental quality pursuant to Title 75, chapter 6, part 1, and Title 76, chapter 4, part 1.

History: En. 89-702.2 by Sec. 3, Ch. 335, L. 1975; R.C.M. 1947, 89-702.2; amd. Sec. 5, Ch. 501, L. 1985; Sec. 85-15-104, MCA 1983; redes. 85-15-107 by Code Commissioner, 1985; amd. Sec. 1, Ch. 159, L. 1987; amd. Sec. 2, Ch. 366, L. 1991; amd. Sec. 1, Ch. 612, L. 1993; amd. Sec. 17, Ch. 217, L. 2003; amd. Sec. 1, Ch. 197, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 197, L. 2025. Amendment effective October 1, 2025.

85-15-108. Entry upon land. Any employee or agent of the department authorized by the director of the department may enter upon any land to carry out the purposes of this chapter. The department or its agent shall give reasonable notice to the landowner of the intention to enter upon the land.

History: En. Sec. 18, Ch. 501, L. 1985.

85-15-109. Legal assistance. When requested by the department, the attorney general or the county attorneys within their respective counties shall perform legal services and conduct legal proceedings necessary to carry out the purposes of this chapter. The department may also employ legal counsel to enforce this chapter and to conduct proceedings under it.

History: En. Sec. 19, Ch. 501, L. 1985.

85-15-110. Rules. The department may adopt rules to implement the provisions of this chapter, including but not limited to rules to:

(1) classify high-hazard dams and reservoirs;

(2) review, approve, and issue permits;

(3) govern inspections under this chapter;

(4) establish safety standards for the design, construction, operation, and maintenance of high-hazard dams and reservoirs;

(5) establish emergency preparedness and warning procedures; and

(6) establish fees commensurate with costs to cover inspections under this chapter.

History: En. Sec. 20, Ch. 501, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

85-15-111 through 85-15-114 reserved.

85-15-115. Purpose. (1) The legislature finds that dams provide a variety of benefits to the state of Montana. These benefits include the regulation of streamflows for flood control; water storage for irrigation, for municipal, industrial, and stock water consumption, and for hydropower generation; improved opportunities for flatwater recreation; and improved fisheries. Additionally, dams play a crucial role in maintaining the vitality of Montana's economy. The state therefore has a legitimate and compelling interest in encouraging the construction of dams that conform to the water storage policy provided in 85-1-703.

(2) The legislature further finds that one impediment to the construction of new dams is the potential liability associated with dam construction and operation. The legislature understands the inherent risks to public safety associated with dam construction and operation but finds that compliance with the Montana Dam Safety Act reduces those risks to an acceptable level.

History: En. Sec. 2, Ch. 612, L. 1993.

Part 2
Construction, Inspection, and Repair of Dams

85-15-201. Renumbered 85-15-306. Code Commissioner, 1985.

85-15-202. Renumbered 85-15-307. Code Commissioner, 1985.

85-15-203. Renumbered 85-15-308. Code Commissioner, 1985.

85-15-204. Renumbered 85-15-309. Code Commissioner, 1985.

85-15-205. Renumbered 85-15-310. Code Commissioner, 1985.

85-15-206. Renumbered 85-15-311. Code Commissioner, 1985.

85-15-207. Dams and reservoirs — how constructed. No person may fill or procure to be filled with water any dam or reservoir that is not so thoroughly and substantially constructed as to safely hold any water that may be turned therein.

History: En. Sec. 2138, Rev. C. 1907; re-en. Sec. 2658, R.C.M. 1921; re-en. Sec. 2658, R.C.M. 1935; R.C.M. 1947, 89-701; amd. Sec. 3, Ch. 501, L. 1985; Sec. 85-15-101, MCA 1983; redes. 85-15-207 by Code Commissioner, 1985.

Cross-References

Fish ladders at dams, 87-1-222.

85-15-208. Construction in a secure manner. No person may construct or cause to be constructed a dam or reservoir for the purpose of accumulating, storing, appropriating, or diverting any of the waters of this state, except in a thorough, secure, and substantial manner.

History: En. Sec. 2139, Rev. C. 1907; amd. Sec. 1, Ch. 168, L. 1917; re-en. Sec. 2659, R.C.M. 1921; re-en. Sec. 2659, R.C.M. 1935; amd. Sec. 5, Ch. 280, L. 1965; amd. Sec. 1, Ch. 370, L. 1971; amd. Sec. 1, Ch. 209, L. 1973; amd. Sec. 1, Ch. 335, L. 1975; R.C.M. 1947, 89-702; amd. Sec. 4, Ch. 501, L. 1985; Sec. 85-15-102, MCA 1983; redes. 85-15-208 by Code Commissioner, 1985.

85-15-209. High-hazard dam — determination. A person proposing to construct a dam or reservoir with an impounding capacity of 50 acre-feet or more measured at the maximum normal operating pool shall make application to the department for a determination of whether the dam or reservoir is a high-hazard dam. The application must include the information required by the department. The department shall make the determination required by this section within 60 calendar days after a complete application is received by the department.

History: **En. Sec. 6, Ch. 501, L. 1985; amd. Sec. 3, Ch. 418, L. 1993.**

85-15-210. Preparation and approval of plans. (1) A person may not begin construction of a high-hazard dam as determined under 85-15-209 without first obtaining a construction permit from the department.

(2) An application for a construction permit must be submitted to the department and must contain:

(a) plans and specifications for the proposed construction, prepared by or under the direction of an engineer experienced in dam design and construction; and

(b) other data and information required by the department.

(3) Within 60 calendar days after receipt of the application and any additional information requested by the department, the department shall:

(a) issue a construction permit or deny the application, as filed; or

(b) issue a construction permit upon terms, conditions, or modifications the department considers appropriate.

History: **En. Sec. 7, Ch. 501, L. 1985.**

85-15-211. Inspection and reports during construction. (1) An engineer must be in charge of and responsible for inspections during construction of any high-hazard dam.

(2) Inspections during construction must be performed at intervals necessary to ensure conformity with the permit. The engineer in charge or a qualified designee shall perform the inspections.

(3) The department shall set procedures and requirements for reporting information obtained from, during, or as the result of an inspection. The engineer in charge shall certify all reports to the department.

(4) The department may also inspect the high-hazard dam during construction to ensure conformity with the construction permit.

(5) If the department finds that construction of the high-hazard dam does not conform with the construction permit, it may order that construction be stopped until changes are made in conformity with the permit.

History: **En. Sec. 8, Ch. 501, L. 1985; amd. Sec. 4, Ch. 418, L. 1993.**

85-15-212. Operating permit. (1) An operation plan must be prepared by the owner and approved by the department prior to operation of the high-hazard dam or reservoir. The operation plan must set forth at a minimum:

(a) a reservoir operation procedure;

(b) a maintenance procedure for the high-hazard dam and appurtenant works; and

(c) emergency procedures and warning plans.

(2) When construction is complete and if the high-hazard dam or reservoir conforms to the construction permit and when an operation plan has been approved, the department shall issue a permit to operate the high-hazard dam or reservoir, containing conditions on the safe operation of the high-hazard dam as it considers necessary.

History: **En. Sec. 9, Ch. 501, L. 1985; amd. Sec. 5, Ch. 418, L. 1993.**

85-15-213. Periodic inspections after construction. (1) (a) A high-hazard dam, whether or not previously permitted by the department, must be inspected as often as considered necessary by the department, but at least once every 5 years, in order to ensure the continued safe operation of the high-hazard dam.

(b) The department determination that an inspection is necessary more often than once every 5 years, as provided in subsection (1)(a), must be based on substantive evidence, and the reasons for that determination must be stated in writing.

(2) Periodic inspections required by this section must be performed by a qualified engineer, who shall make a report of the inspection to the department. If the department finds that the high-hazard dam conforms to current safety standards, it shall issue or reissue, as the case may be, a permit to continue operation of the high-hazard dam, containing conditions on the safe operation of the high-hazard dam as it considers necessary.

(3) The owner is responsible for inspections required under this section.

History: En. Sec. 10, Ch. 501, L. 1985; amd. Sec. 6, Ch. 418, L. 1993.

85-15-214. Requested inspections — costs — limitations against unsafe structures. (1) At its discretion or upon receipt of an affidavit complaining that the person or property of the complainant is endangered by the construction, maintenance, or operation of any dam or reservoir, the department may order an inspection of the dam or reservoir unless the data, records, and inspection reports on file are adequate to determine that the complaint is not meritorious.

(2) If the complainant continues to request an inspection even though the department has determined under subsection (1) that the complaint is not meritorious, the department may make the inspection upon requiring the complainant to deposit with the department money sufficient to cover the costs of the inspection.

(3) If the dam or reservoir is found to be defective, the department may require the person who owns the dam or reservoir to pay all or part of the expenses of inspection. If the department requires such payment, it shall present a bill of costs to the owner. The costs shall constitute a lien upon the dam, reservoir, and other property of the owner and may be collected by appropriate action in a court of competent jurisdiction.

(4) If the dam or reservoir is not found to be defective after an inspection made under subsection (2), any money deposited by the complainant therefor must be paid to the general fund.

(5) If the inspection discloses defects in the dam or reservoir that, in the judgment of the department, constitute an immediate hazard to life or property, the department may order:

(a) the draining of the dam or reservoir;

(b) the limitation or cessation of use of the dam or reservoir or any defective appurtenant works; or

(c) any other steps to eliminate the hazard until the dam, reservoir, or appurtenant works have been made safe and approved by the department.

History: En. Sec. 11, Ch. 501, L. 1985.

85-15-215. Emergency repairs or breaching. (1) In case of an emergency, the department may take any action necessary to safeguard life and property. This action must be commenced immediately by the owner, or by the department at the owner's expense if the owner fails to act. The department must be notified immediately of any proposed emergency repairs or breaching to be instituted by the owner.

(2) All costs incurred by the department during an emergency must be paid by the owner on receipt of a bill of costs from the department. The costs are a lien upon the dam, reservoir, and other property of the owner and may be collected by appropriate action in a court of competent jurisdiction.

History: En. Sec. 12, Ch. 501, L. 1985.

85-15-216. High-hazard dam permit cancellation. Failure to comply with the provisions of 85-15-209 through 85-15-212 or 85-15-214 subjects the permit to cancellation at any time during the progress of construction or the operation of the high-hazard dam. The department is authorized to cancel any permit if the provisions of 85-15-209 through 85-15-212 or 85-15-214 have not been or are not being complied with, and the cancellation operates as a forfeiture of all rights acquired under and by virtue of any permit approved by the department.

History: En. Sec. 15, Ch. 501, L. 1985; amd. Sec. 7, Ch. 418, L. 1993.

Part 3
Court Proceedings

85-15-301. Renumbered 85-15-402. Code Commissioner, 1985.

85-15-302. Renumbered 85-15-403. Code Commissioner, 1985.

85-15-303. Renumbered 85-15-404. Code Commissioner, 1985.

85-15-304. Renumbered 85-15-501(2). Code Commissioner, 1985.

85-15-305. Liability of owners for damage. (1) Except as provided in subsections (2) and (3), nothing in this chapter relieves an owner of a dam or reservoir of any legal duty, obligation, or liability incident to its ownership or operation, including any damages resulting from leakage or overflow of water or floods caused by the failure of the dam or reservoir.

(2) The owner of a dam or reservoir that has been permitted by the department in accordance with this chapter or that was designed and constructed under the supervision of an engineer and properly maintained is, in the absence of negligence, not liable for damages to persons or property resulting from flows of water from failure of the dam or reservoir.

(3) In addition, the owner of any dam or reservoir that has been permitted by the department in accordance with this chapter or that was designed and constructed under the supervision of an engineer and properly maintained may, without incurring liability, allow passage through the reservoir of inflows without diminution.

History: En. Sec. 14, Ch. 501, L. 1985; amd. Sec. 3, Ch. 612, L. 1993.

85-15-306. Repealed. Sec. 9, Ch. 418, L. 1993.

History: En. Sec. 2140, Rev. C. 1907; amd. Sec. 2, Ch. 168, L. 1917; re-en. Sec. 2660, R.C.M. 1921; re-en. Sec. 2660, R.C.M. 1935; R.C.M. 1947, 89-703; Sec. 85-15-201, MCA 1983; redes. 85-15-306 by Code Commissioner, 1985.

85-15-307. Repealed. Sec. 9, Ch. 418, L. 1993.

History: En. Secs. 2141, 2142, 2143, Rev. C. 1907; re-en. Secs. 2661, 2662, 2663, R.C.M. 1921; re-en. Secs. 2661, 2662, 2663, R.C.M. 1935; R.C.M. 1947, 89-704, 89-705, 89-706; amd. Sec. 30, Ch. 526, L. 1983; Sec. 85-15-202, MCA 1983; redes. 85-15-307 by Code Commissioner, 1985.

85-15-308. Repealed. Sec. 9, Ch. 418, L. 1993.

History: En. Sec. 2144, Rev. C. 1907; re-en. Sec. 2664, R.C.M. 1921; re-en. Sec. 2664, R.C.M. 1935; R.C.M. 1947, 89-707; Sec. 85-15-203, MCA 1983; redes. 85-15-308 by Code Commissioner, 1985.

85-15-309. Repealed. Sec. 9, Ch. 418, L. 1993.

History: En. Sec. 2145, Rev. C. 1907; re-en. Sec. 2665, R.C.M. 1921; re-en. Sec. 2665, R.C.M. 1935; R.C.M. 1947, 89-708; Sec. 85-15-204, MCA 1983; redes. 85-15-309 by Code Commissioner, 1985.

85-15-310. Repealed. Sec. 9, Ch. 418, L. 1993.

History: En. Sec. 2146, Rev. C. 1907; re-en. Sec. 2666, R.C.M. 1921; re-en. Sec. 2666, R.C.M. 1935; R.C.M. 1947, 89-709; Sec. 85-15-205, MCA 1983; redes. 85-15-310 by Code Commissioner, 1985.

85-15-311. Repealed. Sec. 9, Ch. 418, L. 1993.

History: En. Sec. 2147, Rev. C. 1907; re-en. Sec. 2667, R.C.M. 1921; re-en. Sec. 2667, R.C.M. 1935; R.C.M. 1947, 89-710; Sec. 85-15-206, MCA 1983; redes. 85-15-311 by Code Commissioner, 1985.

Part 4
Local Government Proceedings

85-15-401. Municipality or county prohibited from regulation. No municipality or county may regulate, supervise, or provide for the regulation or supervision of any dam or reservoir in this state or the construction, maintenance, or operation thereof or limit the size of any dam or reservoir or the amount of water that may be stored therein. This chapter does not prevent a municipality or county from adopting ordinances or regulations regulating, supervising, or providing for the regulation or supervision of dams and reservoirs that:

(1) are not within the state's jurisdiction; or

(2) are not subject to regulation by another public agency or body.

History: En. Sec. 13, Ch. 501, L. 1985.

85-15-402. Repealed. Sec. 9, Ch. 418, L. 1993.

History: En. Sec. 2148, Rev. C. 1907; re-en. Sec. 2668, R.C.M. 1921; re-en. Sec. 2668, R.C.M. 1935; R.C.M. 1947, 89-711; Sec. 85-15-301, MCA 1983; redes. 85-15-402 by Code Commissioner, 1985.

85-15-403. Repealed. Sec. 9, Ch. 418, L. 1993.

History: En. Sec. 2149, Rev. C. 1907; re-en. Sec. 2669, R.C.M. 1921; re-en. Sec. 2669, R.C.M. 1935; R.C.M. 1947, 89-712; Sec. 85-15-302, MCA 1983; redes. 85-15-403 by Code Commissioner, 1985.

85-15-404. Repealed. Sec. 9, Ch. 418, L. 1993.

History: En. Sec. 2150, Rev. C. 1907; re-en. Sec. 2670, R.C.M. 1921; re-en. Sec. 2670, R.C.M. 1935; R.C.M. 1947, 89-713; Sec. 85-15-303, MCA 1983; redes. 85-15-404 by Code Commissioner, 1985.

Part 5
Penalties

85-15-501. Repealed. Sec. 9, Ch. 418, L. 1993; sec. 5, Ch. 612, L. 1993.

History: (1)En. Sec. 16, Ch. 501, L. 1985; (2)En. Sec. 2151, Rev. C. 1907; re-en. Sec. 2671, R.C.M. 1921; re-en. Sec. 2671, R.C.M. 1935; amd. Sec. 64, Ch. 359, L. 1977; R.C.M. 1947, 89-714; Sec. 85-15-304, MCA 1983; redes. 85-15-501(2) by Code Commissioner, 1985.

85-15-502. Deposit of penalties and costs. All penalties and costs collected under this chapter, other than those collected in a justice's court, must be deposited in the state general fund.

History: En. Sec. 17, Ch. 501, L. 1985; amd. Sec. 61, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

85-15-503. Civil penalty. An owner of a dam with an impounding capacity of 50 acre-feet or greater measured at the maximum normal operating pool who fails to comply with a provision of this chapter or a rule or order of the department adopted or made pursuant to this chapter is subject to a civil penalty not to exceed $1,000. Each day of violation is a separate offense.

History: En. Sec. 4, Ch. 612, L. 1993.

CHAPTER 16
WHARVES AND DOCKS

Part 1 — Wharves and Docks

85-16-101. Who may build wharves and docks.
85-16-102. Public use of wharves and docks.
85-16-103. Revocation of license.
85-16-104. Land under navigable water.
85-16-105. Repealed.

Part 1
Wharves and Docks

85-16-101. Who may build wharves and docks. Any person or persons owning land bordering upon any of the navigable waters within the state are granted a license and permit to build docks and wharves over, across, and upon the lands under water belonging to the state. Such docks and wharves shall be extended out into such navigable water such distance only as may be necessary to permit all boats, steamboats, and vessels to safely land thereat and discharge and take on their cargoes and passengers.

History: En. Sec. 1, Ch. 38, L. 1909; re-en. Sec. 1605, R.C.M. 1921; re-en. Sec. 1605, R.C.M. 1935; R.C.M. 1947, 89-601.

85-16-102. Public use of wharves and docks. All docks and wharves built on any of the navigable waters of the state shall be public docks and wharves, and all boats, vessels, and steamboats plying such navigable waters shall have a right to land thereat and take on and discharge their cargoes and passengers thereon. The owner of such dock or wharf shall have the right to charge and collect from the owner or owners of such boat, steamboat, or vessel a reasonable compensation therefor.

History: En. Sec. 2, Ch. 38, L. 1909; re-en. Sec. 1606, R.C.M. 1921; re-en. Sec. 1606, R.C.M. 1935; R.C.M. 1947, 89-602.

85-16-103. Revocation of license. The license granted in 85-16-101 to build docks and wharves over and upon the lands under the navigable waters of this state conveys no title in such lands, and such license may be revoked by the state of Montana at any time.

History: En. Sec. 3, Ch. 38, L. 1909; re-en. Sec. 1607, R.C.M. 1921; re-en. Sec. 1607, R.C.M. 1935; R.C.M. 1947, 89-603.

85-16-104. Land under navigable water. By the term "land under water" is meant all land under any navigable waters of this state extending from high-water mark, or from the meander line where the shores of lakes or streams have been meandered, to the lake or stream.

History: En. Sec. 4, Ch. 38, L. 1909; re-en. Sec. 1608, R.C.M. 1921; re-en. Sec. 1608, R.C.M. 1935; R.C.M. 1947, 89-604.

85-16-105. Repealed. Sec. 1, Ch. 164, L. 1979.

History: En. Sec. 5, Ch. 38, L. 1909; re-en. Sec. 1609, R.C.M. 1921; re-en. Sec. 1609, R.C.M. 1935; amd. Sec. 21, Ch. 315, L. 1974; R.C.M. 1947, 89-605.

CHAPTERS 17 THROUGH 19
RESERVED

CHAPTER 20
WATER COMPACTS

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85-20-102. Purpose of the part.
85-20-103. Definitions.
85-20-104. Filing written statement with department.
85-20-105. Duty to install measuring devices.
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85-20-401. United States National Park Service-Montana compact ratified.
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Part 5 — United States Bureau of Land Management-Montana Compact

85-20-501. United States Bureau of Land Management-Montana compact ratified.

Part 6 — Chippewa Cree Tribe-Montana Compact

85-20-601. Chippewa Cree Tribe-Montana compact ratified.

Part 7 — United States Fish and Wildlife Service, Black Coulee and Benton Lake-Montana Compact

85-20-701. United States Fish and Wildlife Service-Montana compact ratified.

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85-20-801. United States Fish and Wildlife Service, Red Rock Lakes-Montana compact ratified.

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85-20-902. Findings and purpose.
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Part 11 — United States of America, Department of Agriculture, Agricultural Research Service, Fort Keogh Livestock and Range Research Laboratory-Montana Compact

85-20-1101. United States of America, Department of Agriculture, Agricultural Research Service, Fort Keogh Livestock and Range Research Laboratory-Montana compact ratified.

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85-20-1201. United States of America, Department of Agriculture, Agricultural Research Service, Sheep Experiment Station-Montana Compact ratified.

Part 13 — United States of America, Fish and Wildlife Service, Bowdoin National Wildlife Refuge-Montana Compact

85-20-1301. United States of America, fish and wildlife service, Bowdoin national wildlife refuge-Montana compact ratified.

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85-20-1503. Definitions.
85-20-1504. Blackfeet Tribe water rights compact mitigation account — use.
85-20-1505. Blackfeet Tribe water rights compact infrastructure account — use.
85-20-1506. Administrative rules.
85-20-1507 through 85-20-1510 reserved.
85-20-1511. Authorization of bonds — condition.

Part 16 — United States of America, Fish and Wildlife Service, National Bison Range-Montana Compact

85-20-1601. United States of America, fish and wildlife service, national bison range-Montana compact ratified.

Part 17 — United States of America, Fish and Wildlife Service, Charles M. Russell National Wildlife Refuge-Montana Compact

85-20-1701. United States of America, fish and wildlife service, Charles M. Russell national wildlife refuge-Montana compact ratified.

Part 18 — United States of America, Bureau of Land Management, Upper Missouri River Breaks National Monument-Montana Compact

85-20-1801. United States of America, Bureau of Land Management, Upper Missouri River Breaks National Monument-Montana compact ratified.

Part 19 — Confederated Salish and Kootenai-Montana Compact

85-20-1901. Water rights compact entered into by the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, the State of Montana, and the United States ratified.
85-20-1902. Unitary administration and management ordinance.

Part 1
Yellowstone River Compact

85-20-101. Approval of compact. The legislative assembly of the state of Montana hereby approves and ratifies the compact designated as the "Yellowstone River Compact", dated at the city of Billings, state of Montana, on the 8th of December, 1950, signed by Fred E. Buck, A.W. Bradshaw, H.W. Bunston, John Herzog, John M. Jarussi, Ashton Jones, Chris Josephson, A. Wallace Kingsbury, P.F. Leonard, Walter M. McLaughlin, Dave M. Manning, Joseph Muggli, Chester E. Onstad, Ed F. Parriott, R.R. Renne, and Keith W. Trout, as state representatives of the state of Montana on a compact commission between the states of Montana, North Dakota, and Wyoming, which compact is as follows:

YELLOWSTONE RIVER COMPACT

The state of Montana, the state of North Dakota, and the state of Wyoming, being moved by consideration of interstate comity and desiring to remove all causes of present and future controversy between said states and between persons in one and persons in another with respect to the waters of the Yellowstone River and its tributaries, other than waters within or waters which contribute to the flow of streams within the Yellowstone National Park, and desiring to provide for an equitable division and apportionment of such waters and to encourage the beneficial development and use thereof, acknowledging that in future projects or programs for the regulation, control, and use of water in the Yellowstone River basin the great importance of water for irrigation in the signatory states shall be recognized, have resolved to conclude a compact as authorized under the act of congress of the United States of America, approved June 2, 1949 (Public Law 83, 81st congress, First Session), for the attainment of these purposes and to that end, through their respective governments, have named as their respective commissioners:

For the state of Montana:
Fred E. Buck
A. W. Bradshaw
H. W. Bunston
John Herzog
John M. Jarussi
Ashton Jones
Chris Josephson
A. Wallace Kingsbury
P. F. Leonard
Walter M. McLaughlin
Dave M. Manning
Joseph Muggli
Chester E. Onstad
Ed F. Parriott
R. R. Renne
Keith W. Trout
For the state of North Dakota:
I. A. Acker
Einar H. Dahl
J. J. Walsh
For the state of Wyoming:
L. C. Bishop
Earl T. Bower
J. Harold Cash
Ben F. Cochrane
Ernest J. Goppert
Richard L. Greene
E. C. Gwillim
E. J. Johnson
Lee E. Keith
N. V. Kurtz
Harry L. Littlefield
R. E. McNally
Will G. Metz
Mark N. Partridge
Alonzo R. Shreve
Charles M. Smith
Leonard F. Thornton
M. B. Walker

who, after negotiations participated in by R. J. Newell, appointed as the representative of the United States of America, have agreed upon the following articles, to wit:

Article I

A. Where the name of a state is used in this compact, as a party thereto, it shall be construed to include the individuals, corporations, partnerships, associations, districts, administrative departments, bureaus, political subdivisions, agencies, persons, permittees, appropriators, and all others using, claiming, or in any manner asserting any right to the use of the waters of the Yellowstone River system under the authority of said state.

B. Any individual, corporation, partnership, association, district, administrative department, bureau, political subdivision, agency, person, permittee, or appropriator authorized by or under the laws of a signatory state and all others using, claiming, or in any manner asserting any right to the use of the waters of the Yellowstone River system under the authority of said state shall be subject to the terms of this compact. Where the singular is used in this article, it shall be construed to include the plural.

Article II

A. The state of Montana, the state of North Dakota, and the state of Wyoming are hereinafter designated as "Montana", "North Dakota", and "Wyoming", respectively.

B. The terms "commission" and "Yellowstone River Compact commission" mean the agency created as provided herein for the administration of this compact.

C. The term "Yellowstone River basin" means areas in Wyoming, Montana, and North Dakota drained by the Yellowstone River and its tributaries and includes the area in Montana known as lake basin but excludes those lands lying within Yellowstone National Park.

D. The term "Yellowstone River system" means the Yellowstone River and all of its tributaries, including springs and swamps, from their sources to the mouth of the Yellowstone River near Buford, North Dakota, except those portions thereof which are within or contribute to the flow of streams within the Yellowstone National Park.

E. The term "tributary" means any stream which in a natural state contributes to the flow of the Yellowstone River, including interstate tributaries and tributaries thereof but excluding those which are within or contribute to the flow of streams within the Yellowstone National Park.

F. The term "interstate tributaries" means the Clarks Fork, Yellowstone River; the Big Horn River (except Little Big Horn River); the Tongue River; and the Powder River, whose confluences with the Yellowstone River are respectively at or near the city (or town) of Laurel, Big Horn, Miles City, and Terry, all in the state of Montana.

G. The terms "divert" and "diversion" mean the taking or removing of water from the Yellowstone River or any tributary thereof when the water so taken or removed is not returned directly into the channel of the Yellowstone River or of the tributary from which it is taken.

H. The term "beneficial use" is herein defined to be that use by which the water supply of a drainage basin is depleted when usefully employed by the activities of man.

I. The term "domestic use" shall mean the use of water by an individual or by a family unit or household for drinking, cooking, laundering, sanitation, and other personal comforts and necessities and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

J. The term "stock water use" shall mean the use of water for livestock and poultry.

Article III

A. It is considered that no commission or administrative body is necessary to administer this compact or divide the waters of the Yellowstone River basin as between the states of Montana and North Dakota. The provisions of this compact, as between the states of Wyoming and Montana, shall be administered by a commission composed of one representative from the state of Wyoming and one representative from the state of Montana, to be selected by the governors of said states as such states may choose, and one representative selected by the director of the United States geological survey or whatever federal agency may succeed to the functions and duties of that agency, to be appointed by him at the request of the states to sit with the commission and who shall, when present, act as chairman of the commission without vote, except as herein provided.

B. The salaries and necessary expenses of each state representative shall be paid by the respective state; all other expenses incident to the administration of this compact not borne by the United States shall be allocated to and borne one-half by the state of Wyoming and one-half by the state of Montana.

C. In addition to other powers and duties herein conferred upon the commission and the members thereof, the jurisdiction of the commission shall include the collection, correlation, and presentation of factual data, the maintenance of records having a bearing upon the administration of this compact, and recommendations to such states upon matters connected with the administration of this compact, and the commission may employ such services and make such expenditures as reasonable and necessary within the limit of funds provided for that purpose by the respective states and shall compile a report for each year ending September 30 and transmit it to the governors of the signatory states on or before December 31 of each year.

D. The secretary of the army; the secretary of the interior; the secretary of agriculture; the chairman, federal power commission; the secretary of commerce, or comparable officers of whatever federal agencies may succeed to the functions and duties of these agencies and such other federal officers and officers of appropriate agencies of the signatory states having services or data useful or necessary to the compact commission shall cooperate, ex officio, with the commission in the execution of its duty in the collection, correlation, and publication of records and data necessary for the proper administration of the compact; and these officers may perform such other services related to the compact as may be mutually agreed upon with the commission.

E. The commission shall have power to formulate rules and regulations and to perform any act which it may find necessary to carry out the provisions of this compact and to amend such rules and regulations. All such rules and regulations shall be filed in the office of the state engineer of each of the signatory states for public inspection.

F. In case of the failure of the representatives of Wyoming and Montana to unanimously agree on any matter necessary to the proper administration of this compact, then the member selected by the director of the United States geological survey shall have the right to vote upon the matters in disagreement and such points of disagreement shall then be decided by a majority vote of the representatives of the states of Wyoming and Montana and said member selected by the director of the United States geological survey, each being entitled to one vote.

G. The commission herein authorized shall have power to sue and be sued in its official capacity in any federal court of the signatory states and may adopt and use an official seal which shall be judicially noticed.

Article IV

The commission shall itself or in conjunction with other responsible agencies cause to be established, maintained, and operated such suitable water gauging and evaporation stations as it finds necessary in connection with its duties.

Article V

A. Appropriative rights to the beneficial uses of the water of the Yellowstone River system existing in each signatory state as of January 1, 1950, shall continue to be enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation.

B. Of the unused and unappropriated waters of the interstate tributaries of the Yellowstone River as of January 1, 1950, there is allocated to each signatory state such quantity of that water as shall be necessary to provide supplemental water supplies for the rights described in paragraph A of this Article V, such supplemental rights to be acquired and enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation, and the remainder of the unused and unappropriated water is allocated to each state for storage or direct diversions for beneficial use on new lands or for other purposes as follows:

1. Clarks Fork, Yellowstone River

a. to Wyoming 60%
to Montana 40%

b. The point of measurement shall be below the last diversion from Clarks Fork above Rock Creek.

2. Big Horn River (exclusive of Little Big Horn River)

a. to Wyoming 80%
to Montana 20%

b. The point of measurement shall be below the last diversion from the Big Horn River above its junction with the Yellowstone River, and the inflow of the Little Big Horn River shall be excluded from the quantity of water subject to allocation.

3. Tongue River

a. to Wyoming	40%
to Montana	60%

b. The point of measurement shall be below the last diversion from the Tongue River above its junction with the Yellowstone River.

4. Powder River (including the Little Powder River)

a. to Wyoming	42%
to Montana	58%

b. The point of measurement shall be below the last diversion from the Powder River above its junction with the Yellowstone River.

C. The quantity of water subject to the percentage allocations in paragraph B 1, 2, 3, and 4 of this Article V shall be determined on an annual water year basis measured from October 1 of any year through September 30 of the succeeding year. The quantity to which the percentage factors shall be applied through a given date in any water year shall be, in acre-feet, equal to the algebraic sum of:

1. the total diversions, in acre-feet, above the point of measurement, for irrigation, municipal, and industrial uses in Wyoming and Montana developed after January 1, 1950, during the period from October 1 to that given date;

2. the net change in storage, in acre-feet, in all reservoirs in Wyoming and Montana above the point of measurement completed subsequent to January 1, 1950, during the period from October 1 to that given date;

3. the net change in storage, in acre-feet, in existing reservoirs in Wyoming and Montana above the point of measurement, which is used for irrigation, municipal, and industrial purposes developed after January 1, 1950, during the period October 1 to that given date;

4. the quantity of water, in acre-feet, that passed the point of measurement in the stream during the period from October 1 to that given date.

D. All existing rights to the beneficial use of waters of the Yellowstone River in the states of Montana and North Dakota below Intake, Montana, valid under the laws of these states as of January 1, 1950, are hereby recognized and shall be and remain unimpaired by this compact. During the period May 1 to September 30, inclusive, of each year, lands within Montana and North Dakota shall be entitled to the beneficial use of the flow of waters of the Yellowstone River below Intake, Montana, on a proportionate basis of acreage irrigated. Waters of tributary streams having their origin in either Montana or North Dakota, situated entirely in said respective states and flowing into the Yellowstone River below Intake, Montana, are allotted to the respective states in which situated.

E. There are hereby excluded from the provisions of this compact:

1. existing and future domestic and stock water uses of water, provided that the capacity of any reservoir for stock water so excluded shall not exceed 20 acre-feet;

2. devices and facilities for the control and regulation of surface waters.

F. From time to time the commission shall reexamine the allocations herein made and upon unanimous agreement may recommend modifications therein as are fair, just, and equitable, giving consideration among other factors to:

priorities of water rights;
acreage irrigated;
acreage irrigable under existing works; and
potentially irrigable lands.

Article VI

Nothing contained in this compact shall be so construed or interpreted as to affect adversely any rights to the use of the waters of Yellowstone River and its tributaries owned by or for Indians, Indian tribes, and their reservations.

Article VII

A. A lower signatory state shall have the right, by compliance with the laws of an upper signatory state, except as to legislative consent, to file application for and receive permits to appropriate and use any waters in the Yellowstone River system not specifically apportioned to or appropriated by such upper state as provided in Article V; and to construct or participate in the construction and use of any dam, storage reservoir, or diversion works in such upper state for the purpose of conserving and regulating water that may be apportioned to or appropriated by the lower state. Provided, that such right is subject to the rights of the upper state to control, regulate, and use the water apportioned to and appropriated by it. And provided further, that should an upper state elect, it may share in the use of any such facilities constructed by a lower state to the extent of its reasonable needs upon assuming or guaranteeing payment of its proportionate share of the cost of the construction, operation, and maintenance. This provision shall apply with equal force and effect to an upper state in the circumstance of the necessity of the acquisition of rights by an upper state in a lower state.

B. Each claim hereafter initiated for an appropriation of water in one signatory state for use in another signatory state shall be filed in the office of the state engineer of the signatory state in which the water is to be diverted, and a duplicate copy of the application or notice shall be filed in the office of the state engineer of the signatory state in which the water is to be used.

C. Appropriations may hereafter be adjudicated in the state in which the water is diverted, and where a portion or all of the lands irrigated are in another signatory state, such adjudications shall be confirmed in that state by the proper authority. Each adjudication is to conform with the laws of the state where the water is diverted and shall be recorded in the county and state where the water is used.

D. The use of water allocated under Article V of this compact for projects constructed after the date of this compact by the United States of America or any of its agencies or instrumentalities shall be charged as a use by the state in which the use is made. Provided, that such use incident to the diversion, impounding, or conveyance of water in one state for use in another shall be charged to such latter state.

Article VIII

A lower signatory state shall have the right to acquire in an upper state by purchase or through exercise of the power of eminent domain such lands, easements, and rights-of-way for the construction, operation, and maintenance of pumping plants, storage reservoirs, canals, conduits, and appurtenant works as may be required for the enjoyment of the privileges granted herein to such lower state. This provision shall apply with equal force and effect to an upper state in the circumstance of the necessity of the acquisition of rights by an upper state in a lower state.

Article IX

Should any facilities be constructed by a lower signatory state in an upper signatory state under the provisions of Article VII, the construction, operation, repairs, and replacements of such facilities shall be subject to the laws of the upper state. This provision shall apply with equal force and effect to an upper state in the circumstance of the necessity of the acquisition of rights by an upper state in a lower state.

Article X

No water shall be diverted from the Yellowstone River basin without the unanimous consent of all the signatory states. In the event water from another river basin shall be imported into the Yellowstone River basin or transferred from one tributary basin to another by the United States of America, Montana, North Dakota, or Wyoming or any of them jointly, the state having the right to the use of such water shall be given proper credit therefor in determining its share of the water apportioned in accordance with Article V herein.

Article XI

The provisions of this compact shall remain in full force and effect until amended in the same manner as it is required to be ratified to become operative as provided in Article XV.

Article XII

This compact may be terminated at any time by unanimous consent of the signatory states, and upon such termination all rights then established hereunder shall continue unimpaired.

Article XIII

Nothing in this compact shall be construed to limit or prevent any state from instituting or maintaining any action or proceeding, legal or equitable, in any federal court or the United States supreme court, for the protection of any right under this compact or the enforcement of any of its provisions.

Article XIV

The physical and other conditions characteristic of the Yellowstone River and peculiar to the territory drained and served thereby and to the development thereof have actuated the signatory states in the consummation of this compact, and none of them, or the United States of America by its consent and approval, concedes thereby the establishment of any general principle or precedent with respect to other interstate streams.

Article XV

This compact shall become operative when approved by the legislature of each of the signatory states and consented to and approved by the congress of the United States.

Article XVI

Nothing in this compact shall be deemed:

(a) to impair or affect the sovereignty or jurisdiction of the United States of America in or over the area of waters affected by such compact, any rights or powers of the United States of America, its agencies, or instrumentalities in and to the use of the waters of the Yellowstone River basin or its capacity to acquire rights in and to the use of said waters;

(b) to subject any property of the United States of America, its agencies, or instrumentalities to taxation by any state or subdivision thereof or to create an obligation on the part of the United States of America, its agencies, or instrumentalities, by reason of the acquisition, construction, or operation of any property or works of whatsoever kind, to make any payments to any state or political subdivision thereof, state agency, municipality, or entity whatsoever in reimbursement for the loss of taxes;

(c) to subject any property of the United States of America, its agencies, or instrumentalities to the laws of any state to an extent other than the extent to which these laws would apply without regard to the compact.

Article XVII

Should a court of competent jurisdiction hold any part of this compact to be contrary to the constitution of any signatory state or of the United States of America, all other severable provisions of this compact shall continue in full force and effect.

Article XVIII

No sentence, phrase, or clause in this compact or in any provision thereof shall be construed or interpreted to divest any signatory state or any of the agencies or officers of such states of the jurisdiction of the water of each state as apportioned in this compact.

IN WITNESS WHEREOF the commissioners have signed this compact in quadruplicate original, one of which shall be filed in the archives of the department of state of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the governor of each signatory state.

Done at the city of Billings in the state of Montana, this 8th day of December, in the year of Our Lord, one thousand nine hundred and fifty.

Commissioners for the state of Montana:

Fred E. Buck	/S/Fred E. Buck
A. W. Bradshaw	/S/A. W. Bradshaw
H. W. Bunston	/S/H. W. Bunston

John Herzog	/S/John Herzog
John M. Jarussi	/S/John M. Jarussi
Ashton Jones	/S/Ashton Jones
Chris Josephson	/S/Chris Josephson
A. Wallace Kingsbury	/S/A. Wallace Kingsbury
P. F. Leonard	/S/P. F. Leonard
Walter M. McLaughlin	/S/Walter M. McLaughlin
Dave M. Manning	/S/Dave M. Manning
Joseph Muggli	/S/Joseph Muggli
Chester E. Onstad	/S/Chester E. Onstad
Ed F. Parriott	/S/Ed F. Parriott
R. R. Renne	/S/R. R. Renne
Keith W. Trout	/S/Keith W. Trout

Commissioners for the state of North Dakota:

I. A. Acker	/S/I. A. Acker
Einar H. Dahl	/S/Einar H. Dahl
J. J. Walsh	/S/J. J. Walsh

Commissioners for the state of Wyoming:

L. C. Bishop	/S/L. C. Bishop
Earl T. Bower	/S/Earl T. Bower
J. Harold Cash	/S/J. Harold Cash
Ben F. Cochrane	/S/Ben F. Cochrane
Ernest J. Goppert	/S/Ernest J. Goppert
Richard L. Greene	/S/Richard L. Greene
E. C. Gwillim	/S/E. C. Gwillim
E. J. Johnson	/S/E. J. Johnson
Lee K. Keith	/S/Lee K. Keith
N. V. Kurtz	/S/N. V. Kurtz
Harry L. Littlefield	/S/Harry L. Littlefield
R. E. McNally	/S/R. E. McNally
Will G. Metz	/S/Will G. Metz
Mark N. Partridge	/S/Mark N. Partridge
Alonzo R. Shreve	/S/Alonzo R. Shreve
Charles M. Smith	/S/Charles M. Smith
Leonard F. Thornton	/S/Leonard F. Thornton
M. B. Walker	/S/M. B. Walker

I have participated in the negotiation of this compact and intend to report favorably thereon to the congress of the United States.

/S/ R. J. Newell
R. J. Newell,
Representative of the
United States of America.

History: En. Sec. 1, Ch. 39, L. 1951; R.C.M. 1947, 89-903.

Cross-References

Definitions, 85-2-801.

85-20-102. Purpose of the part. Under the provisions of the Yellowstone River Compact (Chapter 39, Laws of Montana 1951), all appropriative rights to the beneficial uses of the waters of the interstate tributaries of the Yellowstone River existing in each signatory state as of January 1, 1950, have been recognized and shall continue to be enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation. All appropriative rights to the beneficial uses of the waters of the interstate tributaries of the Yellowstone River acquired after January 1, 1950, are subject to distribution in the states of Montana and Wyoming in accordance to the percentages in the different basins as provided in subsections (2) and (3) of Article V of said compact. The purpose of this part is to provide the means to determine the various appropriative rights to the beneficial uses of water of the interstate tributaries of the Yellowstone River acquired after January 1, 1950, and the quantity of water diverted and used by each such appropriator during each year, to enable the state of Montana and the Yellowstone River Compact commission to comply with and to administer the percentage allocations as provided in subsections (2) and (3) of Article V of said compact.

History: En. Sec. 1, Ch. 92, L. 1953; R.C.M. 1947, 89-905.

85-20-103. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(2) "Divert" and "diversion" mean the taking or removing of water from any interstate tributary or any tributary thereof, when the water so taken or removed is not returned directly into the channel of the interstate tributary or of the tributary thereof from which it is taken.

(3) "Domestic use" means the use of water by an individual or by a family unit or household for drinking, cooking, laundering, sanitation, and other personal comforts and necessities and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

(4) "Interstate tributaries" or "interstate tributary" means the following described rivers which contribute to the flow of the Yellowstone River in the state of Montana, including all tributaries thereof: the Clarks Fork of the Yellowstone River; the Big Horn River (except the Little Big Horn River); the Tongue River; and the Powder River, whose confluences with the Yellowstone River are respectively at or near the city (or town) of Laurel, Big Horn, Miles City, and Terry, all in the state of Montana.

(5) "Person" means any person, corporation, partnership, association, municipal corporation, agency, and all others authorized by the laws of the state to appropriate water for beneficial uses.

(6) "Stock water use" means the use of water for livestock and poultry.

History: En. Sec. 2, Ch. 92, L. 1953; amd. Sec. 156, Ch. 253, L. 1974; R.C.M. 1947, 89-906.

85-20-104. Filing written statement with department. (1) A person claiming an appropriative right to the use of any water of any interstate tributary that was acquired after January 1, 1950, shall, within 60 days after February 25, 1953, or before the person diverts any water, file with the department at its office in Helena, Montana, a written statement containing the following information:

(a) the name of the claimant and the claimant's address;

(b) the date of appropriation or the date when the water was first applied to a beneficial use;

(c) the quantity of water claimed;

(d) the name of the stream, river, or other source of water from which the diversion is made, if it has a name, and if it does not, a description identifying the stream, river, or source;

(e) the purpose for which the water is claimed and the place of intended use;

(f) the means of diversion;

(g) whether or not a weir or other device for measuring the water intended to be diverted has been installed in the claimant's ditch or other means of diversion;

(h) if a notice of appropriation was filed with the county clerk and recorder, the name of the county where it was filed;

(i) whether the appropriation was made from an adjudicated or nonadjudicated stream, river, or other source of water.

(2) The written statement must be verified by the affidavit of the claimant or someone in the claimant's behalf. The affidavit must state that the matters and facts contained in the written statement are true.

History: En. Sec. 3, Ch. 92, L. 1953; amd. Sec. 10, Ch. 280, L. 1965; amd. Sec. 157, Ch. 253, L. 1974; amd. Sec. 11, Ch. 460, L. 1977; R.C.M. 1947, 89-907; amd. Sec. 2826, Ch. 56, L. 2009.

85-20-105. Duty to install measuring devices. A person claiming an appropriative right to use any waters of any interstate tributary of the Yellowstone River that was acquired after January 1, 1950, shall, after February 25, 1953, and before the person diverts any water, install in the person's ditch or other means of diversion a weir or other measuring device so that all of the water to be diverted by the person can be accurately measured. The installation of a weir or other measuring device is subject to the approval of the department, and if in its judgment the weir or other measuring device or the installation of the weir or device is defective so that the water cannot be accurately measured, it may order the installation of an accurate measuring device. The claimant may not divert any water until the claimant complies with the order.

History: En. Sec. 4, Ch. 92, L. 1953; amd. Sec. 11, Ch. 280, L. 1965; amd. Sec. 158, Ch. 253, L. 1974; R.C.M. 1947, 89-908; amd. Sec. 2827, Ch. 56, L. 2009.

85-20-106. Duty to measure water. Each claimant shall measure all the water being diverted by the claimant, keep accurate records of the diversion on forms prescribed and furnished by the department, and, within 15 days after November 1 of each year, file the written records with the department at its office in Helena, Montana.

History: En. Sec. 5, Ch. 92, L. 1953; amd. Sec. 12, Ch. 280, L. 1965; amd. Sec. 159, Ch. 253, L. 1974; R.C.M. 1947, 89-909; amd. Sec. 2828, Ch. 56, L. 2009.

85-20-107. Status of prior rights. The rights to the beneficial use of any water of any interstate tributary of the Yellowstone River acquired prior to and including January 1, 1950, shall not be impaired by or subject to this part.

History: En. Sec. 6, Ch. 92, L. 1953; R.C.M. 1947, 89-910.

85-20-108. Domestic and stock uses exempted. Any appropriation of water from any interstate tributary of the Yellowstone River made for domestic or stock water uses will not come within the provisions of this part whenever the capacity of a reservoir for stock water does not exceed 20 acre-feet.

History: En. Sec. 7, Ch. 92, L. 1953; amd. Sec. 12, Ch. 460, L. 1977; R.C.M. 1947, 89-911.

85-20-109. Department to make rules. The department of natural resources and conservation shall adopt and enforce reasonable rules consistent with this part and the Yellowstone River Compact.

History: En. Sec. 8, Ch. 92, L. 1953; amd. Sec. 13, Ch. 280, L. 1965; amd. Sec. 160, Ch. 253, L. 1974; R.C.M. 1947, 89-912; amd. Sec. 483, Ch. 418, L. 1995.

85-20-110. Application to adjudicated and nonadjudicated waters. The provisions of this part shall apply to both adjudicated and nonadjudicated waters of the interstate tributaries of the Yellowstone River.

History: En. Sec. 9, Ch. 92, L. 1953; R.C.M. 1947, 89-913.

85-20-111. Department to make record available. The department shall furnish and make available to the Yellowstone River Compact commission, from the records filed in its office, all appropriative rights acquired after January 1, 1950, to the use of the waters of the interstate tributaries of the Yellowstone River in the state of Montana, the amount of the annual diversions from those interstate tributaries, and any other information that its records may disclose as may be required by the Yellowstone River Compact commission.

History: En. Sec. 10, Ch. 92, L. 1953; amd. Sec. 14, Ch. 280, L. 1965; amd. Sec. 161, Ch. 253, L. 1974; R.C.M. 1947, 89-914.

85-20-112. Services of county attorneys. The county attorneys of the state shall perform such legal services and bring such proceedings in carrying out the purposes of this part within their respective counties as the department shall require.

History: En. Sec. 11, Ch. 92, L. 1953; amd. Sec. 162, Ch. 253, L. 1974; R.C.M. 1947, 89-915.

85-20-113. Penalty. Any person who violates or refuses or neglects to comply with any provision of this part or any order or rule adopted by the board or department pursuant thereto or the Yellowstone River Compact is guilty of a misdemeanor and upon conviction shall be fined not less than $25 or more than $200 for each offense.

History: En. Sec. 12, Ch. 92, L. 1953; amd. Sec. 163, Ch. 253, L. 1974; R.C.M. 1947, 89-916.

85-20-114 through 85-20-120 reserved.

85-20-121. Yellowstone compact obligations unimpaired. Nothing contained in Chapter 280, Laws of 1965, shall in any manner impair the obligations of the state of Montana under the Yellowstone River Compact.

History: En. Sec. 20, Ch. 280, L. 1965; R.C.M. 1947, 89-103.7.

Part 2
Fort Peck-Montana Compact

Part Cross-References

Reserved Water Rights Compact Commission, 2-15-212.
Indian and federal water rights, Title 85, ch. 2, part 7.

85-20-201. Fort Peck-Montana compact ratified. The compact entered into by the state of Montana and the Assiniboine and Sioux tribes of the Fort Peck Indian reservation and filed with the secretary of state of the state of Montana under the provisions of 85-2-702 on May 15, 1985, is ratified. The compact is as follows:

FORT PECK-MONTANA COMPACT

This Compact is entered into by and between THE STATE OF MONTANA and THE ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK INDIAN RESERVATION (herein called the "Parties") and shall become effective as set forth hereinafter.

The Parties agree as follows:

ARTICLE I
GENERAL PURPOSES

The basic purposes of this Compact are to determine finally and forever all rights of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation in the State of Montana to water on, under, adjacent to, or otherwise appurtenant to the Reservation, to settle existing disputes and remove causes of future controversy between the Tribes and the State and between Indians of the Fort Peck Reservation and other persons concerning waters of the Missouri River, its tributaries, and ground water, and to settle all claims by the Tribes and by the United States on behalf of the Tribes in United States v. Aageson, Civ. No. 79-21-GF (D. Mont.), United States v. Aasheim, Civ. No. 79-40-BLG (D. Mont.) and the pending adjudication in the state water court initiated pursuant to the provisions of Chapter 697, Laws of Montana 1979.

ARTICLE II
DEFINITIONS

For purposes of this Compact, and for no other purposes, the following definitions apply:

(1) "Acre-foot" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet.

(2) "Annual" or "per year" means the calendar year commencing January 1 and ending December 31.

(3) "Board" means the Fort Peck-Montana Compact Board established by Article VI.

(4) "Conservation (carry-over) storage" is storage provided in a reservoir to capture and hold water that would otherwise go downstream. Such storage holds the water for beneficial use later in the season or is carried over to a subsequent season or seasons. Evaporation from the surface of such reservoir is considered to be a consumptive use to the extent that it exceeds the evaporative and transpirational losses which occurred in the reservoir area prior to its construction.

(5) "Consumptive use" means the amount of irrigation water that is transpired by vegetation, converted in the processes of photosynthesis and plant tissue growth, and evaporated from adjacent soils, water surfaces and foliage. For uses other than irrigation, consumptive use means the quantity of water diverted less the quantity of reusable return flow within the State.

(6) "Court of competent jurisdiction" means a state or federal district court which otherwise has jurisdiction of the subject matter and the parties, or a tribal court which otherwise has such jurisdiction provided that all parties to the case consent to tribal court jurisdiction.

(7) "Diversion" means the removal of water from its natural course or location by means of a ditch, canal, flume, bypass, pipeline, conduit, well, pump, or other structure or device, or the impoundment of water in a reservoir. Where a reservoir is constructed or operated on a stream, the annual diversion shall be the greater of:

(a) the inflow into the reservoir minus the outflow for releases or spills downstream from the reservoir, or

(b) withdrawals of water from the reservoir for actual use.

(8) "Domestic use" means the diversion of water by one or more individuals, family units or households for drinking, cooking, laundering, sanitation and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

(9) "Fort Peck Irrigation Project" means those irrigation systems and works constructed pursuant to the Act of May 30, 1908, 35 Stat. 558, and all lands receiving water from such systems and works.

(10) "Fort Peck Reservoir" means that body of surface water impounded by Fort Peck Dam, at the current spillway elevation.

(11) "Full service irrigation" means any form of irrigation that distributes water on a regularly scheduled basis in order to satisfy the full seasonal crop and soil water requirements.

(12) "Ground water" means any water located under the surface of the land or the bed of any stream, lake, reservoir, or other body of surface water. All other water shall be considered surface water.

(13) "Indian" means any person who:

(a) is an enrolled member of the Tribes; or

(b) is a member of a tribe that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(c) holds or is recognized by the Secretary of the Interior as eligible to hold trust or restricted property on the Reservation.

(14) "Industrial" means the use of water for any uses that benefit an industrial enterprise including, but not limited to, industrial cooling, energy production, and evaporation associated with any industrial operation. Among the purposes excluded from the industrial use category are irrigation, stockwater, and domestic uses.

(15) "Instream flow" means that quantity of water scheduled to remain in a stream to maintain fish and wildlife resources.

(16) "Missouri River" means the river formed by the confluence of the Gallatin, Jefferson and Madison Rivers in southwestern Montana, and flowing easterly beyond the eastern boundary of Montana.

(17) "Partial service irrigation" means the diversion of flood runoff from natural channels or water courses and spreading such water for the purpose of applying as much water as practicable to the land during periods of high stream flow to increase crop production.

(18) "Parties" means the Tribes and the State.

(19) "Person" means an individual or any other entity, public or private, including the State, the Tribes, and the government of the United States and all officers, agents, and departments thereof.

(20) "Regulatory Storage" is storage provided as a part of a water distribution system for operational purposes. Evaporation loss from the distribution system itself is accounted for and is a part of the unit consumptive use rate established in this Compact and is therefore not considered to be a separate item of consumptive use.

(21) "Reservation" means the Fort Peck Indian Reservation as established in the agreement of December 28 and December 31, 1886, and confirmed by the Act of May 1, 1888, 25 Stat. 113.

(22) "Reusable" means capable of further beneficial use.

(23) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "State" means the Director of the State Department of Natural Resources and Conservation or its successor agency.

(24) "Transfer" means any authorization for the delivery or use of water by a joint venture, service contract, lease, sale, exchange or other similar agreement.

(25) "Tribal Water Right" means the right to divert and use water as confirmed by Article III of this Compact.

(26) "Tribes" means the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation and all officers, agents and departments thereof. Unless otherwise indicated, for purposes of notification or consent, "Tribes" means the Tribal Chairman or the Chief Executive Official of the Tribes at the time.

(27) "Tributary" or "tributaries of the Missouri River that flow through or adjacent to the Reservation" means those tributaries of the Missouri River that traverse the Reservation, generally in a north to south direction, including:

(a) streams that form the east and west boundaries of the Reservation (Big Muddy Creek, Porcupine Creek and the Milk River);

(b) streams that originate outside the Reservation but empty into the Missouri River within the boundaries of the Reservation (the Poplar River and its tributaries);

(c) streams that are wholly contained within the boundaries of the Reservation (Chelsea Creek, Tule Creek, Wolf Creek, Oswego Creek, and Little Porcupine Creek); and

(d) all other watercourses that traverse the Reservation.

(28) "Wasteful" means the unreasonable loss of water through the design or negligent operation of a diversion or of a water distribution facility.

ARTICLE III
TRIBAL WATER RIGHT

A. General Statement of the Tribal Water Right. The Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation have the right to divert annually from the Missouri River, certain of its tributaries, and ground water beneath the Reservation the lesser of (i) 1,050,472 acre-feet of water, or (ii) the quantity of water necessary to supply a consumptive use of 525,236 acre-feet per year for the uses and purposes set forth in this Compact with a priority date of May 1, 1888, provided that no more than 950,000 acre-feet of water, or the quantity of water necessary to supply a consumptive use of 475,000 acre-feet may be diverted annually from surface water sources. This right is held in trust by the United States for the benefit of the Tribes and is further defined and limited as set forth in this Compact.

B. Persons Who May Use the Tribal Water Right. All uses of water authorized under any applicable law by the following persons shall be considered and calculated as uses of the Tribal Water Right:

1. the Tribes within or outside the Reservation;

2. all individual Indians using water within the Reservation including, but not limited to, Indians exercising uses established pursuant to state law prior to the effective date of this Compact;

3. all non-Indian successors-in-interest to any allottee actually using water within the Reservation by virtue of a water right arising under the laws of the United States, which water right was acquired directly or indirectly from an Indian predecessor-in-interest;

4. all other persons receiving water from the Fort Peck Irrigation Project including, but not limited to, persons exercising uses established pursuant to state law prior to the effective date of this Compact;

5. all other persons authorized to use water by the Tribes pursuant to this Compact, within or outside the Reservation;

6. the United States as trustee for the Tribes or any Indian including, but not limited to, persons exercising uses established pursuant to state law prior to the effective date of this Compact.

C. Measure of Consumptive Use for Irrigation. Irrigation usage of the Tribal Water Right shall be conclusively deemed to cause a consumptive use of 1.8 acre-feet per acre per year for full service irrigation and 0.48 acre-feet per acre per year for partial service irrigation. Any loss of water due to evaporation from reservoirs constructed in the future for conservation (carry-over) storage rather than for regulatory storage by the United States for the benefit of the Tribes or any Indian, or constructed for such conservation storage by the Tribes or by any Indian, shall be counted as a consumptive use.

D. Purposes for Which the Tribal Water Right May be Used. Within the Reservation, use of water in the exercise of the Tribal Water Right for any purpose may be authorized by the Tribes without regard to whether such use is beneficial as defined by valid state law. No use of the Tribal Water Right may be wasteful or inconsistent with the terms of this Compact. Outside the Reservation, any use of water in the exercise of the Tribal Water Right shall be beneficial as defined by valid state law on the date the Tribes give notice to the State of a proposed use outside the Reservation.

E. Facilities Diverting or Using the Tribal Water Right Outside the Reservation. All persons diverting or using the Tribal Water Right outside the Reservation, including the Tribes as sovereign, shall apply for all permits, certificates, variances and other authorizations required by valid state laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water located outside the Reservation, and shall comply with all applicable provisions of this Compact. A diversion or use of water in the exercise of the Tribal Water Right may be made only after all permits, certificates, variances or other authorizations applied for pursuant to this paragraph have been obtained, and the diversion or use has not been found unlawful by a court of competent jurisdiction.

F. Amounts To Be Diverted from the Missouri River.

1. Diversions of water for use within or outside the Reservation may be made in the exercise of the Tribal Water Right from Fort Peck Reservoir and the mainstem of the Missouri River—but without utilization of the conservation (carry-over) storage of Fort Peck Reservoir—in the following amounts:

(a) during the months of November, December, January, February and March, not to exceed 40,000 acre-feet per month;

(b) during the months of April and October, not to exceed 50,000 acre-feet per month;

(c) during the months of May and September, not to exceed 105,000 acre-feet per month;

(d) during the month of June, not to exceed 145,000 acre-feet;

(e) during the month of July, not to exceed 215,000 acre-feet;

(f) during the month of August, not to exceed 180,000 acre-feet.

Provided that the aggregate of monthly diversions in the exercise of the Tribal Water Right from surface water shall not exceed 950,000 acre-feet per year, and the total annual consumptive use shall not exceed 475,000 acre-feet.

2. The Tribes shall report the amount of all actual diversions from Fort Peck Reservoir and the mainstem of the Missouri River to the United States Army Corps of Engineers by April 1st of the calendar year following the year in which such diversions are made in accordance with paragraph 5 of section J of this Article.

3. All diversions authorized by paragraph 1 of this section may be made without payment to the United States, but the Tribes and any user of the Tribal Water Right shall otherwise comply with all generally applicable laws and regulations of the United States.

G. Export of the Tribal Water Right Outside the State. Use of the Tribal Water Right outside the State shall be in compliance with all valid provisions of state law in effect at the time of the proposed transfer that prohibit, regulate, condition, or permit the transportation of water outside the State.

H. Non-use of the Tribal Water Right not a Forfeiture. Non-use of any part of the Tribal Water Right shall not constitute a relinquishment, forfeiture or abandonment of the right to such use.

I. Sources of Diversions of the Tribal Water Right. In the exercise of the Tribal Water Right water may be diverted:

1. Within the Reservation for use within the Reservation from:

(a) the mainstem of the Missouri River within or adjacent to the Reservation;

(b) any tributary of the Missouri River that flows through or adjacent to the Reservation, except the mainstem of the Milk River; and

(c) any ground water source.

2. Outside the Reservation for use within the Reservation from:

(a) Fort Peck Reservoir;

(b) any tributary of the Missouri River that flows through or adjacent to the Reservation, except the mainstem of the Milk River; and

(c) the mainstem of the Missouri River below Fort Peck Dam.

Diversions authorized by subparagraphs (a) and (c) shall comply with paragraph 1 of section J of this Article.

3. Within or outside the Reservation for use outside the Reservation from:

(a) Fort Peck Reservoir;

(b) any tributary of the Missouri River that flows through or adjacent to the Reservation, except the mainstem of the Milk River, provided that water from these sources shall not be transported outside the respective watershed of each stream;

(c) the mainstem of the Missouri River below Fort Peck Dam; and

(d) the mainstem of the Missouri River above Fort Peck Reservoir.

Diversions authorized by subparagraphs (a) and (c) shall comply with paragraph 1 of section J of this Article. Diversions authorized by subparagraph (b) shall comply with paragraph 4 of section K of this Article. Diversions authorized by subparagraph (d) shall comply with paragraph 3 of section J of this Article.

J. Notice of and Conditions upon Diversions and Uses of the Tribal Water Right.

1. The Tribes shall give the State not less than 180 days advance written notice of any proposed diversion or use of the Tribal Water Right authorized by subparagraphs 2(a) and 2(c) and subparagraphs 3(a) and 3(c) of section I of this Article and shall, in the case of any transfer of the Tribal Water Right, except agreements on the tributaries pursuant to paragraph 4 of section K of this Article, offer the State an opportunity to participate as provided in paragraph 2 of section K of this Article. Such notice shall include sufficient documentation to demonstrate that:

(a) the proposed use of water complies with section D of this Article;

(b) for diversions outside the Reservation, the proposed means of diversion and the construction and operation of the diversion works are adequate;

(c) the proposed use and diversion will not adversely affect, except with the consent of the owner of such right, any of the following rights to the use of water existing at that time:

(i) any water right arising under the laws of the United States;

(ii) any appropriative right to the use of water established pursuant to the laws of the State that has not been abandoned, but excluding any reservation of water made pursuant to the laws of the State which has not been put to actual beneficial use by the date notice is given;

(d) the proposed use does not cause any unreasonable significant adverse environmental impact; and

(e) proposed diversions in excess of 4,000 acre-feet per year and 5.5 cubic feet per second of water will not:

(i) substantially impair the quality of water for existing uses in the source of water from which the diversion is made;

(ii) be made where low quality water which can economically be used is legally and physically available to the Tribes for the proposed use;

(iii) create or substantially contribute to saline seep; or

(iv) substantially injure fish or wildlife populations in the source of water from which the diversion is made.

The requirements of subparagraph (c) of this paragraph may be satisfied by a showing that the owner of such right has consented to the adverse effect. Subparagraph (c) shall not be construed to alter or avoid in any way the consequences resulting from such consent under state law.

2. A proposed diversion or use of the Tribal Water Right outside the Reservation authorized by subparagraphs 2(a) and 2(c) and subparagraphs 3(a) and 3(c) of section I of this Article may be challenged only:

(a) within 30 days after the expiration of the notice period provided in paragraph 1 of this section;

(b) in a court of competent jurisdiction; and

(c) by the State or by a person whose rights are adversely affected by the proposed diversion or use.

In any such case, the Tribes shall have the burden of going forward and the burden of proving by a preponderance of the evidence that they have satisfied the requirements of paragraph 1 of this section.

3. Diversions of water in the exercise of the Tribal Water Right outside the Reservation from the mainstem of the Missouri River above Fort Peck Reservoir, as authorized in subparagraph 3(d) of section I of this Article, may be made so long as the Tribes or any user of the Tribal Water Right:

(a) comply with all the laws of the State in effect at the time the diversion is proposed, including but not limited to state water use statutes;

(b) give not less than 180 days advance written notice of any proposed diversion in the manner required in paragraph 5 of this section:

(i) if the diversion is to be made from a reservoir, to the operator of the reservoir; or

(ii) if the diversion is not to be made from a reservoir, to the operator of the first dam, upstream and downstream, if any, from the point of diversion;

(c) obtain approval of the diversion from the State legislature.

4. For purposes of demonstrating compliance with subparagraph 1(c) and subparagraph 3(a) of this section and paragraph 6 of Section K of this Article, the portion of the Tribal Water Right to be diverted will be deemed an appropriative right which has:

(a) been acquired on May 1, 1888;

(b) a point of diversion and use where the water is actually being diverted and used or, if not actually being diverted, where the water would first flow on or adjacent to the Reservation;

(c) the existing use or, if not actually in use, an irrigation use provided, however, that the use can be transferred to a purpose other than irrigation without restriction as to period of use so long as the requirements of Section F of this Article are observed;

(d) the actual consumptive use or, if not actually in use or if being used for irrigation purposes, a consumptive use of 1.8 acre-feet per acre per year; and

(e) not been abandoned or forfeited.

5. Any notice of a diversion required by paragraph 3 of this section and any report of a diversion required by paragraph 2 of section F of this Article shall specify:

(a) the person authorized to make the diversion;
(b) the amount of water proposed or authorized to be diverted annually;
(c) the amount proposed or authorized for annual consumptive use;
(d) the point of diversion;
(e) the period of use;
(f) the place of use; and
(g) the purposes for which the water may be used.

K. Transfers of the Tribal Water Right.

1. As an incident to and in the exercise of the Tribal Water Right, the Tribes may transfer within or outside the Reservation, as authorized by federal law and this Compact, the right to use water but may not permanently alienate such right or any part thereof. Any such transfer of water by the Tribes shall be subject to all provisions of this Compact.

2. Prior to making any transfer which authorizes use of water outside the Reservation to be diverted from the mainstem of the Missouri River, including Fort Peck Reservoir, the Tribes shall give not less than 180 days advance written notice to the State of the proposed terms and conditions of the transfer, and shall offer the State the opportunity to participate in the transfer as a substantially equal partner with the Tribes, assuming obligations and receiving benefits of the transfer under terms and conditions agreed to by the Parties. If the State does not accept the opportunity within the 180-day notice period, or if the State unreasonably delays the institution or completion of approval processes required by state law or unreasonably delays resolution of any litigation arising from its decision to accept the opportunity, the Tribes may proceed with the proposed transfer without State participation, provided that the proposed transfer shall be subject to all other provisions of this Compact. If the State does not accept the opportunity, or if State participation in the joint transfer is not approved, the State shall not later pursue the opportunity, except in accordance with all the terms of this Compact, including paragraph 3 of this section.

3. Prior to making any transfer allowing use or diversion of water from Fort Peck Reservoir or from the mainstem of the Missouri River below Fort Peck Dam, the State shall give not less than 180 days advance written notice to the Tribes of the proposed terms and conditions of the transfer and shall offer the Tribes the same opportunity to participate in the transfer as a substantially equal partner with the State, assuming obligations and receiving benefits of the transfer on terms and conditions agreed to by the Parties. If the Tribes do not accept the opportunity within the 180 day notice period, the State may proceed with the proposed transfer without the Tribes' participation, and the Tribes shall not later pursue the opportunity except in accordance with all the terms of this Compact, including paragraph 2 of this section.

4. If otherwise authorized by federal law, the Tribes may enter into an agreement with any person who is exercising or proposing to exercise a right under the laws of the State to use surface water outside the Reservation on any tributary of the Missouri River that flows through or adjacent to the Reservation, except the mainstem of the Milk River, which agreement allows such person's diversion and use and protects it from any other exercise of the Tribal Water Right provided, however, that:

(a) before use of such water, the person shall have complied with all applicable state laws concerning the acquisition of a water right;

(b) subsequent to acquisition of the state water right, regulation of its use shall be subject to state law;

(c) the amount of water subject to the agreement shall be considered a consumptive use of the Tribal Water Right;

(d) the agreement shall not permanently alienate the Tribal Water Right or any part thereof.

5. The Tribes may transfer annually only the following amounts of water for consumptive use outside the Reservation:

(a) 50,000 acre-feet;

(b) plus 35 percent of any amount over 200,000 acre-feet but less than 300,000 acre-feet authorized by state law to be transferred annually by the State from waters within the State;

(c) plus 50 percent of any amount over 300,000 acre-feet authorized by state law to be transferred annually by the State from waters within the State.

Transfers of the Tribal Water Right shall not be considered as part of any amounts authorized by state law to be transferred annually by the State.

6. In no event shall the Tribes be authorized to transfer less than 50,000 acre-feet of water per year outside the Reservation. The limits established in paragraph 5 of this section shall apply so long as the State is authorized to transfer annually at least 50,000 acre-feet of water pursuant to state law. If statutory authorization for the State to transfer water is not enacted, is repealed, or is held invalid, or if the amount of water authorized by state law to be transferred by the State is less than 50,000 acre-feet per year, then for any period in which the authorization or the limitation is not in force the Tribes may transfer water in accordance with all terms and conditions of this Compact other than paragraph 5 of this section. However, such transfers will be subject to any volume limitations provided by federal law or, in the absence of any federal volume limitations, the Tribes may transfer water in accordance with all terms and conditions in this Compact other than paragraph 5 of this section and with any volume limitations imposed by state law which would apply to a holder of a right to the use of water established pursuant to state law. For the purposes of complying with volume limitations imposed by state law, the Tribal Water Right will be deemed to have the characteristics set forth in paragraph 4 of section J of this Article.

7. Unless authorized by federal law, the State shall not in any manner whatsoever tax any proceeds received by the Tribes as consideration for any transfer of the Tribal Water Right.

L. Instream Flows.

1. At any time within five years after the effective date of this Compact, the Tribes may establish a schedule of instream flows to maintain any fish or wildlife resource in those portions of streams, excluding the mainstem of the Milk River, which are tributaries of the Missouri River that flow through or adjacent to the Reservation. These instream flows shall be a part of the Tribal Water Right with a priority date of May 1, 1888. Water remaining in a stream

to maintain instream flows pursuant to such a schedule shall be counted by the Tribes as a consumptive use of surface water.

2. Instream flows may be established by the Tribes only in accordance with this section. The Tribes may change the use of water for maintenance of instream flows to another purpose only with the consent of the State.

M. No Other Diversion or Use of the Tribal Water Right. No other diversion or use of the Tribal Water Right shall be made other than those authorized or recognized by this Article.

ARTICLE IV
PROTECTION OF USES UNDER STATE LAW

A. Uses Protected.

1. The following existing and proposed uses of water by Indians within the Reservation are protected and shall not be subordinated to any other uses by subsequent provisions of this Article:

(a) a maximum of 113 acres of irrigated land within the Wolf Creek watershed;

(b) a maximum of 11 acres of irrigated land within the Poplar River watershed;

(c) a maximum of 523 acres of irrigated land within the Big Muddy Creek watershed; and

(d) a maximum of 300 acres of land irrigated with ground water near the confluence of Porcupine Creek and the Milk River.

2. Uses of water by Indians within the Reservation for stockwatering purposes not in excess of 20 acre-feet per year for each impoundment and for all domestic uses are protected and shall not be subordinated to any other uses by subsequent provisions of this Article.

3. With the exception of the uses protected in paragraphs 1 and 2 of this section, diversion and use of water in the exercise of the Tribal Water Right except from the mainstem of the Missouri River, including water allocated to instream flow purposes, shall be subordinate to the following uses of water in the Porcupine Creek, Poplar River, Big Muddy Creek, Little Porcupine Creek, Wolf Creek, Tule Creek, and Chelsea Creek watersheds, including all tributary streams within those watersheds, and all underlying ground water whether or not hydrologically connected with the surface water:

(a) the beneficial uses of water with a priority date of December 31, 1984 or earlier established under the laws of the State and identified in Appendix A to this Compact;

(b) such rights of the United States Fish and Wildlife Service to the waters of Big Muddy Creek for the Medicine Lake National Wildlife Refuge as may be finally determined by the state water court;

(c) beneficial uses of water for domestic purposes;

(d) beneficial uses of water for stock watering purposes in existence prior to December 31, 1984, and beneficial uses of water for stock watering subsequent to that date not in excess of 20 acre-feet per year for each impoundment.

4. Except as to the rights protected in paragraph 3 of this section, the Tribal Water Right shall be prior to all rights to the use of surface and ground water established under the laws of the State with a priority date later than May 1, 1888.

B. Changes of Protected Uses.

1. The rights to the use of water protected by paragraph 3 of section A of this Article may be changed in accordance with state law as to point of diversion, period of use, place of use, purpose of use, or ownership of the right provided that:

(a) the proposed change will not adversely affect any use of the Tribal Water Right existing at the time of the proposed change;

(b) the amount of surface water flowing onto the Reservation within the Poplar River, the Big Muddy Creek, or the Porcupine Creek watersheds, will not be changed; and

(c) the source of the water will not be changed from surface to ground water, or from ground to surface water, or from one watershed to another.

2. Upon receiving an application for a proposed change authorized by paragraph 1 of this section, the State shall give the Tribes such advance written notice as is required by state law.

3. If an irrigation use is changed in any manner, or if a reservoir is constructed or operated which results in the consumptive use of water by evaporation, the following limitations apply:

(a) no more than 1.8 acre-feet of consumptive use per year may be authorized for each acre of land retired from full service irrigation; and

(b) no more than 0.48 acre-feet of consumptive use per year may be authorized for each acre of land retired from partial service irrigation;

(c) evaporation from any reservoir shall be charged as a consumptive use in accordance with definition 4 in Article II.

4. If an irrigation use is changed to an industrial use, all diversions and return flows shall be measured by a device acceptable to and subject to periodic inspection and testing by the State and the Tribes at the expense of the owner. The owner shall also have the quality of the return flows sampled and tested by a laboratory acceptable to the State and the Tribes as often as reasonably required by the State and the Tribes and at the expense of the owner.

ARTICLE V
ADMINISTRATION OF WATER RIGHTS

A. United States Administration. All rights to the use of water received from the Fort Peck Irrigation Project shall be administered by the United States, and the United States has the final and exclusive jurisdiction to resolve all disputes concerning uses of water received from the Fort Peck Irrigation Project subject to any judicial review provided by applicable law.

B. Tribal Administration.

1. The Tribal Water Right shall be administered by the Tribes, and the Tribes have the final and exclusive jurisdiction to resolve all disputes between users of the Tribal Water Right, except for disputes concerning uses of water received from the Fort Peck Irrigation Project and disputes involving users of the Tribal Water Right pursuant to agreements authorized in Article III, section K, paragraph 4.

2. Administration and enforcement of the Tribal Water Right shall be pursuant to a water code, which shall be adopted by the Tribes and submitted for approval to the Secretary of the Interior within one year after ratification of this Compact by the Parties. Such code shall take effect 18 months after ratification of this Compact unless sooner disapproved by the Secretary of the Interior. Pending the adoption and approval of the tribal water code, administration and enforcement of the Tribal Water Right shall be by the Secretary of the Interior as trustee for the Tribes. The Tribes shall not administer the Tribal Water Right in a manner which denies any person a water right owned by that person which arises under the laws of the United States.

3. Within six months after the tribal water code takes effect or within six months after disapproval of the code by the Secretary, the Tribes or the Secretary of the Interior shall provide the State with notice of each existing use of the Tribal Water Right which shall show:

(a) the person authorized to make the diversion;

(b) the amount of water authorized to be diverted annually;

(c) the amount of water authorized for annual consumptive use;

(d) the point of diversion;

(e) the period of use;

(f) the place of use;

(g) the uses for which the water may be diverted; and

(h) the relative priority of the use as against other uses of the Tribal Water Right.

4. The Tribes shall thereafter notify the State within sixty days after the end of each quarter year of all new uses of surface and ground water authorized by the Tribes during the preceding quarter year and of all new uses of the Tribal Water Right actually commenced during that quarter year.

C. State Administration.

1. The State shall administer all rights to the use of surface water and ground water within or outside the Reservation which are not a part of the Tribal Water Right to the fullest extent allowed by law. The State shall have the final and exclusive jurisdiction to resolve all disputes between users of rights established under state law.

2. Within two years after ratification of this Compact, the State shall notify the Tribes of all existing uses authorized by the State on the mainstem of the Missouri River below Fort Peck Dam and on all tributaries of the Missouri River that flow through or adjacent to the Reservation, except the mainstem of the Milk River. The State shall notify the Tribes within sixty days after

the end of each quarter year of all new uses of surface and ground water permitted by the State on each of these sources during the preceding quarter year and of all new uses of water actually commenced pursuant to the laws of the State during that quarter year on each of these sources. Notices required by this paragraph shall include the information required by paragraph 3 of section B of this Article.

3. No agency of the State shall administer any part of the Tribal Water Right. From and after the effective date of this Compact, unless the Tribal Water Right confirmed in Article III is fully utilized at the time application is made for a permit or other authorization, the State shall issue no permit or other authorization to divert or use water within the Reservation to the following persons:

(a) the Tribes;

(b) any Indian;

(c) any non-Indian successor-in-interest to any allottee on the Reservation by virtue of that person's assertion of a right arising under the laws of the United States; or

(d) the United States for the benefit of the Tribes or any Indian or any non-Indian successor-in-interest to any allottee.

D. Regulation of Ground Water.

1. With the exception of uses protected in Article IV, neither the State nor the Tribes shall authorize or continue the use of ground water without the consent of the other if such use will:

(a) result in degradation of instream flows established pursuant to section L of Article III; or

(b) contribute to the permanent depletion or the significant degradation of the quality of a ground water source which in whole or in part underlies the Reservation.

2. With the exception of uses protected in Article IV, the State shall not, without the Tribes' consent, authorize or continue the use of ground water that unreasonably interferes with a use of ground water authorized by the Tribes. The Tribes shall not, without the consent of the State, authorize or continue the use of ground water that unreasonably interferes with a use of ground water authorized by the State and protected by Article IV of this Compact.

ARTICLE VI
FORT PECK-MONTANA COMPACT BOARD

A. Board established. There is hereby established the Fort Peck-Montana Compact Board, which shall exercise powers and responsibilities as set forth in this Article.

B. Membership.

1. The Board shall consist of three members. One member shall be appointed by the Governor of the State of Montana or, in lieu of such appointment, shall be the Governor. The salary and expenses of that member shall be paid by the State. One member shall be appointed by the Chairman of the Tribes, or in lieu of such appointment, shall be the Tribal Chairman. The salary and expenses of that member shall be paid by the Tribes. The third member shall be selected by agreement of the other two members. The salary and expenses of that member and all other expenses of the Board shall be shared equally by the State and the Tribes subject to the availability of funds. Each member duly appointed or selected shall hold office for a term of six years, and for so long thereafter until a successor shall be appointed or selected. The initial term of each member shall be staggered, with one member serving a six-year term, one a four-year term, and one a two-year term. The initial term of each member shall be chosen by lot, or by any other procedure and agreed upon in writing by the first three members of the Board. If the Governor or the Tribal Chairman serves on the Board, such person shall not serve on the Board beyond his or her term as Governor or Tribal Chairman.

2. Should the two appointed members fail to agree within sixty days of the effective date of this Compact or within thirty days after any vacancy occurs, on the selection of the third member, the following procedure shall be utilized:

(a) within five days each member shall nominate no more than five and no less than three persons to serve as a member of the Board;

(b) within fifteen days thereafter each member shall reject all but one of the persons nominated by the other member;

(c) the chief judge of the United States District Court for the District of Montana shall select the third member of the Board from the remaining two nominees. If the chief judge declines for any reason to select the third member, the chief justice of the Montana Supreme Court shall make the selection from the remaining two nominees.

3. Vacancies on the board shall be filled by appointment of a person to serve the unexpired term of the member whose seat has become vacant. If the member appointed by the Governor becomes unable or unwilling to serve on the Board, the Governor shall make the appointment within fifteen days. If the member appointed by the Tribal Chairman becomes unable or unwilling to serve, the Tribal Chairman shall make the appointment within fifteen days. If the third member of the Board becomes unable or unwilling to serve on the Board, the remaining members shall fill the vacancy under the procedure set forth in paragraphs 1 and 2 of this section.

C. Quorum and Vote Required. Two members of the Board shall constitute a quorum if reasonable notice has been provided in advance to the absent member. Meetings may be in person or, in appropriate circumstances, by telephone. All Board decisions shall be by a majority of the Board, shall be in writing and, together with any dissenting opinions, shall be delivered to all parties in the proceeding before the Board, and to both Parties to this Compact.

D. Jurisdiction of the Board. The Board shall have exclusive jurisdiction, only as provided in this Compact, to resolve any controversy over the use of ground water to which this Compact pertains, any controversy over the use of surface water within the Reservation or from any tributary of the Missouri River that flows through or adjacent to the Reservation, except the mainstem of the Milk River, and any controversy as to the meaning of this Compact between: (i) on the one hand, the Tribes or any person or persons claiming a right to use the Tribal Water Right; and (ii) on the other hand, the State or any person or persons claiming a right to use water under the laws of the State.

E. Powers and Duties of the Board.

1. The Board shall have power to administer oaths to witnesses, to take evidence under oath, and to issue subpoenas to compel the attendance of witnesses or for the production of books, records, documents and other evidence. The courts of the Tribes and the State shall enforce any subpoena issued by the Board in the same manner as prescribed by the laws of the Tribes and the State for enforcing a subpoena issued in a civil action by courts of the Tribes and the State.

2. The Board shall hold hearings in proceedings before it and shall give advance notice to the Tribes, the State and all parties to any proceeding personally or by registered mail not less than five days before any hearing. Appearance at a hearing waives such notice. The Board may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The Tribes, the State and all parties to the proceeding are entitled to be heard, to present evidence material to the controversy, to cross-examine witnesses appearing at the hearing, and to be represented by counsel at their own expense.

3. The Board may enter an order after hearing granting any party to the dispute before it temporary or preliminary injunctive relief, or any other relief which the Board deems appropriate except money damages. The Board or any party to a proceeding before the Board may invoke the jurisdiction of a court of competent jurisdiction to enforce any temporary or preliminary injunction so issued by the Board by filing a petition for enforcement naming the enjoined person as respondent. Upon filing the petition, the court shall enter any order it deems appropriate for enforcement of the injunction ordered by the Board, including but not limited to injunctive relief on such terms as to bond or otherwise as it deems proper for the security of the rights of the enjoined party. The United States, the State, and the Tribes shall not be required to post any bond. The court may appoint a water commissioner or master to monitor compliance with such relief.

4. The Board shall adopt rules and regulations to govern its procedures and to carry out its responsibilities under this Compact. Such rules and regulations must be consistent with all provisions of this Compact. All records of the Board shall be open to public inspection except for privileged information.

5. The Board may employ or seek assistance of such clerical or other personnel and may establish such offices as it deems necessary for the performance of its functions according to this

Compact. Pending the establishment of a principal office, the Board's office shall be located at Fort Peck Agency of the Bureau of Indian Affairs.

6. The annual budget of the Board shall be subject to approval of the Parties to this Compact and to the availability of funds appropriated by the Parties.

F. Review and Enforcement of Board Decisions.

1. Decisions by the Board shall be effective immediately, unless stayed for a period of time prescribed by the Board. On application of a party within a reasonable time, but in any event no more than ninety days after a decision is rendered, the Board may modify or correct any decision:

(a) where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the decision;

(b) where the decision is imperfect in a matter of form not affecting the merits of the controversy; or

(c) where the decision requires clarification.

2. Any party before the Board may, within ten days of any final decision, apply to the Board to modify or set aside any aspect of the decision. Notice of such application shall be served personally or by registered mail upon all parties to the proceeding. Any other party shall have ten days within which to respond to the application. The Board shall act on such application within ten days after a response is filed or, if no response is filed, within fifteen days after the application is filed. If the Board fails to act within the time limitations set forth in this paragraph, the application shall be deemed denied. The time for appeal provided in paragraph 3 of this section shall not begin to run until the application is determined as provided in this paragraph.

3. Any party before the Board may appeal any final decision by the Board to a court of competent jurisdiction within thirty days of such decision. The notice of appeal shall be filed with the Board and served personally or by registered mail upon the Tribes, the State and all parties to the proceeding before the Board, and all such persons shall thereafter have the right to participate in the appeal.

4. In any appeal, the Board's decision shall be presumed to be valid, and may be vacated by the court only on one of the following grounds:

(a) the decision is not supported by substantial evidence;

(b) the decision was procured by corruption, fraud or undue means;

(c) there was evident partiality or corruption by the Board or by any member;

(d) the Board was guilty of misconduct in refusing to hear the dispute, or in refusing to hear evidence pertinent and material to the controversy, or any other clear misbehavior by which the rights of any party have been substantially prejudiced;

(e) the Board exceeded its authority under the terms of this Compact; or

(f) the decision is contrary to law.

5. Unless an appeal is timely filed as provided in paragraph 3 of this section, any decision of the Board shall be confirmed or enforced by any court of competent jurisdiction on petition of the Board, the Tribes, the State or any party before the Board in the proceeding in which the decision was made.

6. A court of competent jurisdiction in which a timely appeal is filed pursuant to paragraph 3 of this section, or in which a petition to confirm or enforce is filed pursuant to paragraph 5 of this section, may order such temporary or permanent relief as it considers just and proper.

7. An appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to paragraph 3 of this section, or in which a petition to confirm or enforce is filed pursuant to paragraph 5 of this section, in the manner and to the same extent as from orders or judgments of the court in a civil action.

8. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the court the record of the proceedings before the Board.

G. Waiver of Immunity. The Tribes and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, to permit the appeal or judicial enforcement of Board decisions as provided in this Compact, except that such waivers shall not extend to any action for money damages including costs and attorneys' fees as a result of such judicial action.

ARTICLE VII
FINALITY AND EFFECTIVENESS OF COMPACT

A. Ratification. This Compact shall become effective as to both parties when ratified by the Legislature of the State of Montana and the Fort Peck Tribal Executive Board and approved by the United States Departments of Justice and the Interior. Ratification by the State and by the Tribes is irrevocable, and this Compact may not be modified in any manner whatsoever except with the joint consent of the legislative body of both Parties.

B. Incorporation into Decrees and Disposition of Federal Suits.

1. The Parties and the United States shall petition for incorporation of this Compact into the preliminary decrees and final decrees in any state water court proceedings to adjudicate any right to the use of water to which this Compact pertains, and this Compact may not be modified in any manner whatsoever without the consent of both Parties as provided in section A of this Article. The United States shall not be bound by provisions of this Compact until it is incorporated into the final decree, as provided in this section.

2. This Compact shall only be filed as a proposed consent decree in United States v. Aageson, Civ. No. 79-21-GF (D. Mont.), or United States v. Aasheim, Civ. No. 79-40-BLG (D. Mont.) if there is a final determination by the state courts that they lack jurisdiction over, or that the state proceedings are inadequate to adjudicate, some or all of the water rights asserted in either of the above cases. Upon a final determination that the state courts have jurisdiction over, and that the state proceedings are adequate to adjudicate all of the water rights in the above cases, the United States and the Parties will immediately execute a joint motion pursuant to Rule 41(a) of the Federal Rules of Civil Procedure to dismiss with prejudice and on their merits all claims by the Tribes and the United States on behalf of the Tribes in the pending cases.

ARTICLE VIII
DISCLAIMERS AND RESERVATION OF RIGHTS

A. Disclaimers. Nothing in this Compact shall be so construed or interpreted:

1. to establish the nature, extent, transferability, or manner of enforcement of water rights of any Indian reservation other than the Fort Peck Indian Reservation;

2. to preclude the acquisition or exercise of an appropriative right to the use of water under state law by the Tribes or any individual Indian outside the Reservation by purchase of such right or by purchase of land, or by application to the State;

3. to preclude the acquisition or exercise of an appropriative right to the use of water under state law by the Tribes or any individual Indian within the Reservation:

(a) by purchase of such right or by purchase of land, provided that water rights acquired by such purchase after ratification of this Compact shall be deemed to be an exercise of the Tribal Water Right; or

(b) by application to the State, provided that the Tribal Water Right confirmed in Article III has been fully utilized at the time an application is made;

4. to determine the relative rights inter sese of persons using water under the authority of the State or the Tribes;

5. to limit in any way the rights of the Parties or any other person to litigate any issues or questions not resolved by this Compact;

6. to authorize the taking of a water right which is vested under state or federal law;

7. to create or deny substantive rights through headings or captions used in this Compact; or

8. to address or prejudge whether, in any interstate apportionment of the waters of the Missouri River Basin, the Tribal Water Right shall be counted as a part of the waters apportioned to the State.

B. Reservation of Rights. The Parties expressly reserve all rights not granted, recognized or relinquished in this Compact.

ARTICLE IX
TRIBAL RELINQUISHMENT OF OTHER WATER CLAIMS

The Tribal Water Right confirmed in Article III shall be final and conclusive. With the exception of the Tribal Water Right recognized herein and rights established under state law as authorized by this Compact, the Tribes and the United States as trustee for the Tribes hereby relinquish forever any and all existing and future claims to water from any source and for any purpose. This relinquishment includes, but is not limited to, any claim for water derived from: aboriginal use of land or water; any Indian treaties; any act of Congress; and any executive act of the United States.

ARTICLE X
BINDING EFFECT

A. Persons Bound. Upon the effectiveness of this Compact, its terms will be binding:

1. upon the State and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State of Montana, provided that for purposes of consent, ratification, or authorization the validity of consent, ratification, or authorization is to be determined by Montana law; and

2. upon the Tribes and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right to the use of the Tribal Water Right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribes, or any right arising under tribal law, provided that for purposes of consent, ratification, or authorization the validity of consent, ratification or authorization is to be determined by Tribal law. Notwithstanding any other provision of law, the Tribal Water Right confirmed in Article III of the Fort Peck-Montana Compact includes conclusively and forever the water rights arising under the laws of the United States of all persons on the Fort Peck Reservation by virtue of the ownership or purchase of any Indian allotment, and the courts of the State shall not have jurisdiction to adjudicate or decree any such right claimed by any such person.

B. Effect on Other Laws. The provisions of the Fort Peck-Montana Compact shall supersede any present or future enactment or common law rule inconsistent with such Compact including but not limited to Montana Code Annotated 28-2-708.

ARTICLE XI
SEVERABILITY

Should any part of this Compact other than Articles III, IV, VII, or IX be held to be invalid, all other parts thereof shall continue to be in full force and effect. Should any part of Articles III, IV, VII, or IX be held invalid, either party may withdraw from the remaining provisions of this Compact by action of its legislative body taken within one year from the determination of such invalidity.

ARTICLE XII
LEGISLATION

A. Future legislation. The parties agree to seek enactment of further legislation if it becomes necessary to effectuate the provisions and purposes of this Compact, and to protect such provisions and purposes from challenge and attack, provided that no provisions of the Compact shall be modified as to substance except as provided in Article VII.

B. Petition to Congress.

1. The Parties hereby request the Montana legislature to petition Congress to enact the following legislation in substantially the following form:

"Sec. 2. For purposes of this Act, the term:

(a) "Fort Peck-Montana Compact" means that Compact pertaining to the reserved water rights of the Assiniboine and Sioux Tribes of the Fort Peck Reservation ratified by the legislature of the State of Montana on May 15, 1985 and by the Tribes on April 29, 1985.

(b) "Reservation" means the Fort Peck Indian Reservation as defined in the agreement of December 28 and December 31, 1886, and confirmed by the Act of May 1, 1888, 25 Stat. 113.

(c) "Secretary" means the Secretary of the Interior.

(d) "Tribes" means the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation.

"Sec. 3.

"(a) The Tribes, subject to the approval of the Secretary, may enter into any joint venture, service contract, lease, exchange or other agreement, or any amendment, supplement or other modification of such agreement (hereinafter referred to as a "Water Agreement") authorizing the delivery, use or transfer of any part of the water right confirmed in the Tribes by the Fort

Peck-Montana Compact for a specified term, not to exceed fifty years, inclusive of all renewal periods. A Water Agreement may authorize the diversion or use of water within or outside the Reservation subject to all terms of the Fort Peck-Montana Compact.

"(b) The Secretary shall approve or disapprove any Water Agreement within (1) one hundred and eighty days after submission or (2) sixty days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C) and any other requirement of federal law, whichever is later. Any party to such an agreement may enforce the provisions of this subsection pursuant to 28 U.S.C. 1361. Notwithstanding any other law, all projections, studies, data or other information possessed by the Department of the Interior regarding the terms and conditions of the Water Agreement or the financial return to the Tribes, shall be held by the Department of the Interior as privileged proprietary information of the Tribes."

2. The provisions of this Compact shall have no force and effect until the resolution set forth in paragraph 1 of this section is approved by the Montana Legislature and submitted to Congress.

IN WITNESS WHEREOF the representatives of the State of Montana and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation have signed this Compact in five original counterparts on the 10th day of April, 1985.

For the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation

....
Walter Clark

....
Norman Hollow

....
Caleb Shields

For the State of Montana
Montana Reserved Water Rights Compact Commission

....
W. Gordon McOmber, Chairman

....
Jack E. Galt, Vice Chairman

....
William M. Day

....
Everett C. Elliott

....
Daniel O. Kemmis

....
A.B. Linford

....
Joseph P. Mazurek

....
Audrey G. Roth

....
Chris D. Tweeten

APPROVED:

For the Secretary of the Interior

....

For the Attorney General of the United States

....

History: En. Sec. 1, Ch. 735, L. 1985.

Part 3
Northern Cheyenne-Montana Compact

85-20-301. Northern Cheyenne-Montana compact ratified. The compact entered into by the state of Montana and the Northern Cheyenne tribe of the Northern Cheyenne Indian reservation and filed with the secretary of state of the state of Montana under the provisions of 85-2-702 on May 20, 1991, is ratified. The compact is as follows:

WATER RIGHTS COMPACT
STATE OF MONTANA
NORTHERN CHEYENNE TRIBE
UNITED STATES OF AMERICA

This Compact is entered into by and among the Northern Cheyenne Tribe of the Northern Cheyenne Reservation, the State of Montana, and the United States of America to settle, for all time, any and all existing claims of or on behalf of the Northern Cheyenne Tribe to water within the State of Montana.

RECITALS

WHEREAS, in 1975, the Northern Cheyenne Tribe and the United States, on behalf of the Tribe, brought suits in the United States District Court for the District of Montana to obtain a final determination of the Tribe's water rights;

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes Northern Cheyenne water rights;

WHEREAS, the federal district court suits were stayed in 1983 pending the outcome of Montana State court water adjudication proceedings;

WHEREAS, the adjudication of Northern Cheyenne water rights under state law has been suspended while negotiations have proceeded to conclude a compact resolving all reserved water rights claims of the Northern Cheyenne Tribe;

WHEREAS, the Northern Cheyenne Tribe and the United States agree that the Tribal Water Right described in this Compact shall be in satisfaction of the Tribe's reserved water rights claims and any claims to water rights made on behalf of the Tribe by the United States;

WHEREAS, it is in the best interest of all parties that the reserved water rights claims of the Northern Cheyenne Tribe be settled through a Water Rights Compact;

WHEREAS, the parties agree that settlement of the reserved water rights claims of the Northern Cheyenne Tribe is dependent on the repair and enlargement of the Tongue River Reservoir;

NOW THEREFORE, the parties agree as follows:

Article I
Definitions

The following definitions shall apply for purposes of this Compact:

1. "Acre-foot" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet.
2. "Alluvial groundwater" means water located below the land surface within the Quaternary hydrostratigraphic unit that borders or underlies major perennial and intermittent streams in the Tongue River and Rosebud Creek basins. This unit is composed of unconsolidated alluvial deposits of clay, silt, sand, and gravel. For the purposes of this Compact, all other water below the land surface will be deemed nonalluvial groundwater.
3. "Annual" or "per year" means during one year as defined by this Compact.
4. "Board" means the Northern Cheyenne-Montana Compact Board established by Article IV of this Compact.
5. "Completion date" means the date of completion of a project to repair and enlarge the Tongue River Dam to a degree sufficient to provide the storage component of the Tribal Water Right subject to the conditions provided in this Compact.
6. "Depletion" means, for any diversion of water, the difference between the quantity of water diverted and the quantity of return flows within the basin.
7. "Direct flow of the Tongue River" means the water in the Tongue River and its tributaries that has not been stored in the Tongue River Reservoir.
8. "Domestic use" means the diversion of water by one or more individuals, family units or households for drinking, cooking, laundering, sanitation and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

9. "Excess water" means increases in the Tongue River basin water supply resulting from conditions different from those assumed in the Tongue River Water Model.

10. "Exchange water" means water available to the Tribe from the Tongue River direct flow or from the Tongue River Reservoir storage in exchange for Tribal return flows made available to other Tongue River water users.

11. "Indian" means any person who: a) is an enrolled member of the Northern Cheyenne Tribe; or b) is a member of a tribe that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or c) holds, or is recognized by the Secretary of the Interior as eligible to hold, trust and restricted property on the Northern Cheyenne Reservation.

12. "Manifolded well system" means a water distribution or conveyance facility that is supplied by two or more wells.

13. "Miles City Decree water right" means a water right, finally decreed in any general adjudication of the Tongue River, or recognized under state law until such final adjudication, which is based on the decree entered in Miles City Canal & Irrigating Co. v. Lee, et al., Montana Seventh Judicial District, No. 2809, May 20, 1914, and which has a priority date of March 24, 1909, or earlier.

14. "Parties" means the Tribe, the State of Montana, and the United States.

15. "Person" means an individual or any other entity, public or private, including the State, the Tribe, and the government of the United States and all officers, agents, and departments thereof.

16. "Ratification date" means the date this Compact has been approved by the Northern Cheyenne Tribal Council and the Legislature of the State of Montana.

17. "Reservation" means the Northern Cheyenne Reservation as established by Executive Orders of November 26, 1884 and March 19, 1900.

18. "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "State" means the Director of the State Department of Natural Resources and Conservation or its successor agency.

19. "State contract right" means a right to receive stored water from the Tongue River Reservoir, not to exceed a cumulative total of 40,000 acre-feet per year, pursuant to a contract that allocates the storage rights of the Montana Department of Natural Resources and Conservation or its successor agency.

20. "Tongue River Water Model" means the Tongue River Reservoir Operations computer model that is documented in: Tongue River Modeling Study, Final Report, submitted on July 20, 1990, to the Engineering Bureau of the Water Resources Division of the Montana Department of Natural Resources and Conservation, or any revision agreed to by the parties. The Final Report and any agreed revisions are incorporated herein by reference as though set forth in full.

21. "Transfer" means any authorization for the delivery or use of water from the Tribe or any person authorized by the Tribe to any other person by a service contract, lease, sale, exchange or other similar agreement.

22. "Tribal Water Right" means the right to divert or use water as described by Articles II and III of this Compact.

23. "Tribe" means the Northern Cheyenne Tribe of the Northern Cheyenne Reservation and all officers, agents and departments thereof. Unless otherwise indicated, for purposes of notification or consent, "Tribe" means the Tribal President or the Chief Executive Official of the Tribe.

24. "United States" means the federal government and all officers, agencies, departments and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "United States" means the Secretary of the Department of the Interior.

25. "Year" means the twelve-month period beginning April 1st and ending March 31st.

Article II
Tribal Water Right

A. Quantification of Water Right.

The water rights of the Northern Cheyenne Tribe are as follows:

1. Existing Non-Agricultural Uses.

Tribal and individual Indian stockwater, domestic and municipal water uses on the Reservation and in existence as of the ratification date are hereby recognized and protected as part of the Tribal Water Right, and are in addition to the water rights set forth in Sections A.2., A.3., and A.4. of this Article. All such existing uses shall be governed by the terms of this Compact.

2. Tongue River.

Subject to the terms of this Compact, the Tribal Water Right in the Tongue River basin consists of the right to divert or use or to permit the diversion or use of up to 32,500 acre-feet per year, from a combination of direct flow, storage, and exchange water. Tribal and individual Indian irrigation uses in existence on the Reservation in the Tongue River basin as of the ratification date are recognized and protected, and shall be counted as a use of the 32,500 acre-feet per year right described in Section A.2. of this Article.

a. Direct Flow Right. The Tribe has a right to divert or use or permit the diversion or use of up to 12,500 acre-feet of water per year from direct flow of the Tongue River and its tributaries with a priority date of October 1, 1881; provided, that:

i. The Tribe's annual depletion of its direct flow water right in the Tongue River and its tributaries shall not exceed 75 percent of the amount diverted, or 9,375 acre-feet per year; and

ii. The Tribe's direct flow water right in the Tongue River and its tributaries may not be used in a manner that adversely affects:

A. Miles City Decree water rights, or

B. Water rights from off-Reservation tributaries of the Tongue River, which are finally decreed in any general adjudication of the Tongue River, or are recognized under state law until such final adjudication, and which have a priority date of June 30, 1973 or earlier and are based on the use of an irrigation system in place and not abandoned as of June 30, 1973.

b. Storage and Exchange Water. The Tribe has a right to divert or deplete, or permit the diversion or depletion of, up to 20,000 acre-feet per year from a combination of water stored in the Tongue River Reservoir and exchange water. The availability of the 20,000 acre-feet per year depends, as provided in the Tongue River Water Model, upon the annual schedule utilized by the Tribe for diversions of Tongue River direct flows. Except as provided in paragraph A.2.c.ii. of this Article, any reduction in Tongue River Reservoir stored water resulting from Tribal diversions of Tongue River direct flows shall not affect State contract rights, as defined in this Compact, but shall be satisfied exclusively from the right described in this paragraph. Tribal use of stored water from the Tongue River Reservoir shall be measured at the Reservoir.

c. Shortages.

i. The Tribal Water Right in the Tongue River basin shall be subject to shortages due to natural low flows that are consistent with the period of record used in the Tongue River Water Model in diversion amounts not to exceed 50% in any one year and 100% cumulative in any ten-year period.

ii. Decreases in the amount of water stored in the Tongue River Reservoir that are caused by: (i) sedimentation; (ii) Reservoir inflows lower than those assumed in the Tongue River Water Model; (iii) normal and expected maintenance of the Tongue River Dam and associated structures; or (iv) normal and expected deterioration of the Tongue River Dam and associated structures shall not be considered a failure of the Tongue River Dam as that term is utilized in paragraph A.2.f. of this Article. All such decreases in water availability shall be shared pro rata among all users of stored water including the Tribe.

d. Excess Water. The Tribe shall, as part of the Tribal Water Right, have the first right to use excess water, as defined in this Compact; provided, that total use of the Tongue River Tribal Water Right shall not exceed 32,500 acre-feet per year diverted from direct flow, storage, and exchange water. Tribal nonuse of excess water in any one year shall not affect the right of the Tribe to use excess water in any subsequent year.

e. Contract Water. Nothing in this Compact shall affect the water, and any rights therein, secured to the Tribe by Water Purchase Contract No. 232 for 7,500 acre-feet per year, dated March 15, 1938, between the Tongue River Water Users Association, the Water Conservation Board of the State of Montana and the United States, through the Secretary of the Interior. Any water entitlement pursuant to the Contract shall be in addition to and not a part of the 32,500 acre-feet per year Tribal Water Right set forth above.

f. Failure of Tongue River Dam. In the event of a failure of the Tongue River Dam which causes a substantial diminution of the Tribe's storage right set forth in paragraph A.2.b. of this Article, and notwithstanding the provisions of Article V.A. of this Compact, any party may within 180 days of said failure request the others to renegotiate this Compact. The parties shall have three years from the date of the request to reach a new agreement, during which time all of the provisions in this Compact shall remain in full force and effect. If no party requests renegotiation, or if a new agreement is not reached within three years of the request, the provisions of paragraph A.2.a.ii. of this Article concerning the subordination of the Tongue River direct flow Tribal Water Right to other specified water rights, shall become null and void; provided, that all other provisions of this Compact shall remain in full force and effect. The Tribe shall not be entitled to void or terminate this Compact, or to assert that the State is in breach of the Compact, for a failure of the Tongue River Dam; provided, that any and all other rights of the Tribe arising from such event shall not be affected by this paragraph.

3. Rosebud Creek.

a. Water Right. The Tribe has a right to divert or use or to permit the diversion or use from Rosebud Creek and its tributaries, for agricultural purposes only, of 1,800 acre-feet of water per year, or enough water to irrigate 600 acres of land per year, whichever is less, with a priority date of October 1, 1881. Tribal and individual Indian irrigation uses in existence as of the ratification date on-Reservation in the Rosebud Creek basin are recognized and protected, and shall be considered a use of the 1,800 acre-feet per year right described in this paragraph.

b. Implementation. The Tribe agrees that in the period between May 1, 1991 and July 1, 1993, the Tribe, or persons authorized by it, will develop no more than 200 acres of land in addition to irrigation uses in existence as of May 1, 1991, through irrigation methods involving pumping of alluvial groundwater, except that the Tribe, or persons authorized by it, may develop up to the full 600 acres of land, or any portion thereof, by any other method. During this period, the Tribe and the State agree to share any hydrologic data available for use in connection with any test which the State undertakes to evaluate impacts, if any, of development of on-Reservation lands on off-Reservation lands. After July 1, 1993, the Tribe, or persons authorized by it, may develop the full 600 acres of land by any irrigation method.

c. Additional Water Right. In addition to the water right described in paragraph A.3.a. of this Article, the Tribe has a right to divert or use or permit the diversion or use from Rosebud Creek and its tributaries, for any purpose, of up to 19,530 acre-feet of water per year, or enough water to irrigate 6,510 acres of land per year, whichever is less, with a priority date of October 1, 1881. The Tribe may not exercise the water right set forth in this paragraph in a manner that adversely affects a water right finally decreed in any general adjudication of the Rosebud Creek basin or, until such final decree is issued, a water right recognized under state law, which 1) has a priority date of June 30, 1973 or earlier, and 2) is based on the use of an irrigation system in place and not abandoned as of June 30, 1973; provided, that the state law water rights protected in this paragraph shall not exceed:

i. North of the Reservation, 8,100 acre-feet of water per year or enough water to irrigate 2,700 acres of land per year, whichever is less; and

ii. South of the Reservation, 540 acre-feet of water per year or enough water to irrigate 180 acres of land per year, whichever is less.

d. Dams and Impoundments. The Tribe shall not construct, within the Rosebud Creek basin, any dams or impoundments to store water naturally arising in Rosebud Creek and its tributaries; provided, that the Tribe may construct stockwater impoundments pursuant to paragraph A.5. of this Article, and, subject to other applicable provisions of this Compact, may construct dams or impoundments within the Rosebud Creek basin to store water from sources outside the basin, including non-alluvial groundwater.

e. Moratorium on Permits. The Montana Department of Natural Resources and Conservation shall order a moratorium on the issuance of permits in the Rosebud Creek basin concurrent with the ratification date of this Compact. The moratorium shall not apply to applications for permits by persons who have entered into deferral agreements with the Tribe for Rosebud Creek basin water as provided in Section G. of this Article. The Department may order the moratorium lifted if it determines that water is available over and above the amount necessary to fulfill the Tribal Water Right described in paragraph A.3.a. and Section A.3.c. of this Article. The Tribe may challenge the Department's determination to lift the moratorium under the procedure set forth in Article IV of this Compact.

4. Groundwater.

a. Alluvial Groundwater. The Tribe has a right to withdraw and use, or permit the withdrawal and use of, alluvial groundwater in lieu of surface water diversions of the Tongue River and Rosebud Creek Tribal Water Right, subject to the same terms and conditions of this Compact that apply to such surface water diversions. Alluvial water withdrawn from wells or manifolded well systems with a capacity of 100 gallons per minute or less shall not be deducted from the Tribal Water Right. For wells or manifolded well systems with a capacity of withdrawing greater than 100 gallons per minute of alluvial water, the entire amount withdrawn shall be deducted from the Tribal Water Right.

b. Non-alluvial Groundwater. Except where a Tribal right to non-alluvial groundwater is established pursuant to Article VII.B. of this Compact, Tribal use or authorization of use of non-alluvial groundwater shall, at the election of the Tribe, comply with state law in effect at the time of the use or with the alluvial groundwater provisions of paragraph A.4.a. of this Article.

5. Stockwater Impoundments. The Tribe may construct, or permit the construction of, stockwater impoundments on the Reservation, where the capacity of the impoundment is less than 15 acre-feet and the impoundment is constructed on a source other than a perennial flowing stream. The amount of water so impounded shall not be deducted from the Tribal Water Right.

6. Subirrigation. The Tribe shall be entitled to take advantage of any natural subirrigation occurring on the Reservation. Where otherwise consistent with state law, persons outside the Reservation shall also be entitled to take advantage of natural subirrigation.

7. Big Horn Reservoir (Yellowtail) Storage.

a. Tribal Allocation. As a part of the Tribal Water Right, the Secretary of the Interior shall allocate 30,000 acre-feet per year of stored water in Big Horn Reservoir, Yellowtail Unit, Lower Bighorn Division, Pick-Sloan Missouri Program, Montana, measured at the dam, for use or disposition by the Tribe for any beneficial purpose, either on or off the Reservation, pursuant to the terms of this Compact. This allocation is subject to the prior reserved water rights, if any, of any Indian tribe, or of persons claiming water through that tribe, to that water. Any use or disposition of water from Big Horn Reservoir off the Reservation by the Tribe is subject to the specific provisions relating to such use or disposition in any act of Congress ratifying this Compact.

b. Payment for Tribal Allocation. The Tribe shall not be required to make payments to the United States for any portion of the Tribal Water Right stored in Yellowtail Reservoir unless and until the water is used or sold by the Tribe in which case the Tribe shall make annual payments to the United States as hereinafter provided.

i. Use or Sale for Municipal and Industrial (M&I) Purposes. For each acre-foot of stored water used or sold for M&I purposes, the Tribe shall pay annually to the United States an amount to cover the proportionate share of the annual operation, maintenance and replacement (OM&R) costs, and the proportionate share of the capital costs with appropriate interest for the Yellowtail Unit allocable to the Tribe's stored water. Upon full payment of the capital costs allocable to the Tribe's stored water supply, the annual payments shall include only a proportionate share of the annual OM&R costs. Such annual payments shall be reviewed and adjusted, as appropriate, to reflect the actual capital and OM&R costs for the Yellowtail Unit.

ii. Agricultural, Domestic, Livestock, and Other Uses. For each acre-foot of stored water used or sold for other than M&I purposes, the Tribe shall pay annually to the United States an amount to cover the OM&R cost for the Yellowtail Unit allocable to the Tribe's stored water, which amount shall be reviewed and adjusted, as appropriate, to reflect the actual OM&R costs for the Yellowtail Unit. The Bureau of Indian Affairs shall transfer sufficient funds on a nonreimbursable basis to the Bureau of Reclamation to cover allocable OM&R costs under this paragraph.

c. Rates and Revenues. Except for payments required to be made to the United States as set forth above, the Tribe shall set such rates as it deems proper for its use or sale of stored water and shall retain all revenues from its use or sale of said stored water; provided, that the

United States reserves the right to use any and all water stored in Yellowtail Reservoir for hydropower generation.

d. Agreement. Following ratification of this Compact, and upon development of a demand for the water under Section A.7. of this Article, the United States and the Tribe shall enter into an appropriate agreement, if required, setting forth the terms and conditions under which water will be made available to the Tribe, and for the collection and disposition of revenues in connection therewith.

B. Persons Entitled to Use the Tribal Water Right.

The Tribal Water Right may be used by the Tribe, or persons authorized to use water by the Tribe pursuant to Article III; provided, that:

1. Such use is in accordance with the terms of this Compact;

2. That the Tribe shall give preference to Tribal members to use the Tribal Water Right; and

3. Such water right may be transferred from one Tribal member to another Tribal member for agricultural purposes only upon the transfer of land on the Reservation from one Tribal member to another Tribal member.

C. Place of Use of the Tribal Water Right.

Pursuant to a Tribal water code adopted as prescribed in Article III of this Compact, and subject to all other provisions of this Compact, the Tribe shall have the right to use or permit use of the Tribal Water Right with any point of diversion or any place of use on or off the Reservation; provided, that any use of the Tribal Water Right off the Reservation shall not be deemed to convert the Tribal Water Right to a state water right, and subsequent nonuse of the Tribal Water Right off the Reservation shall not constitute a relinquishment, forfeiture, or abandonment of the Right.

D. Purposes of the Tribal Water Right.

Except as provided in paragraph A.3.a. of this Article, the Tribe may authorize use of the Tribal Water Right on the Reservation for any purpose without regard to whether such use is beneficial as defined by state law. Off the Reservation, any use of the Tribal Water Right shall comply with Article III.B.

E. Conditions Upon Uses of the Tribal Water Right.

The Tribe shall adopt appropriate regulations to ensure that use of the Tribal Water Right is not wasteful and does not degrade water quality.

F. Transfer of Tribal Water Right.

The Tribe shall not transfer water naturally arising in Rosebud Creek or its tributaries for use off the Reservation. The Tribe may transfer any other part of the Tribal Water Right for use on or off the Reservation pursuant to the terms of this Compact. This paragraph shall not affect the right of the Tribe to enter into a deferral agreement regarding Rosebud Creek water pursuant to Section G. of this Article.

G. Deferral Agreements.

After the ratification date, the Tribe may enter into an agreement with any person who is exercising or proposing to exercise a right under state law to use surface water off the Reservation, which agreement protects the person's right from any exercise of the Tribal Water Right; provided, that:

1. Before use of such water, the person shall have complied with all applicable state laws concerning the acquisition of a water right;

2. Subsequent to acquisition of the state water right, regulation of its use shall be subject to state law;

3. The amount of water subject to the agreement shall be deducted from the amount of water available for depletion by the Tribe in the basin from which the water is being diverted; and

4. The agreement shall not permanently alienate the Tribal Water Right or any part thereof.

H. Effect of Non-Use of Tribal Water Right.

Non-use of any part of the Tribal Water Right shall not constitute a relinquishment, forfeiture or abandonment of the Right.

I. Tribal Water Right to be Held in Trust.

The Tribal Water Right shall be held in trust by the United States for the benefit of the Tribe.

Article III
Administration of Water Rights

A. Tribal Administration.

1. Except as otherwise provided in this Compact, the use of the Tribal Water Right shall be administered by the Tribe, and the Tribe has the final and exclusive jurisdiction to resolve all disputes between users of the Tribal Water Right. Administration and enforcement of the Tribal Water Right shall be pursuant to a water code, which shall be developed and adopted by the Tribe and submitted for approval to the Secretary of the Interior within one year after ratification of this Compact. Pending the adoption and approval of the Tribal water code, the administration and enforcement of the Tribal Water Right shall be by the Secretary of the Interior.

2. Within six months after the Tribal water code takes effect, the Tribe shall provide the State with notice of each use of the Tribal Water Right, including uses in existence as of the ratification date of this Compact and those established since that time, which shall show:

a. The person authorized to make the diversion;
b. The amount of water authorized to be diverted annually;
c. The amount of water authorized for annual consumption;
d. The point of diversion;
e. The period of use;
f. The place of use;
g. The uses for which the water may be diverted; and
h. The relative priority of the use as against other uses of the Tribal Water Right.

3. The Tribe shall thereafter notify the State within sixty days after the end of each quarter year of all new uses of surface and groundwater authorized by the Tribe during the preceding quarter year and of all new uses of the Tribal Water Right actually commenced during that quarter year. The notice shall be in the same format as that prescribed in Section A.2. of this Article.

4. The Tribe shall provide the State with not less than 180-days written notice prior to the start of construction of any project to divert any portion of the Tribal Water Right from the Big Horn River or the Big Horn Reservoir for use on the Reservation, or from the Tongue River or the Tongue River Reservoir for use on the Reservation in the Rosebud Creek basin. The notice shall describe: any diversion, conveyance and storage facilities; the amounts of water to be diverted and consumed; and the purpose, place, and period of the proposed use. Diversion or use of water from such project may be made only after all permits, certificates, variances or other authorizations described in paragraph B.3. of this Article have been obtained. With respect to any such project or diversion, the State or any affected person may seek such remedies as may be available under federal, state, or tribal law, and nothing in this Compact shall be construed to affect the rights of any party under such law.

B. Off-Reservation Uses of the Tribal Water Right.

1. Off-Reservation Uses. Any use of the Tribal Water Right involving a point of diversion or place of use located off the Reservation shall be considered an off-Reservation use; provided, that releases or diversions from Big Horn Reservoir or Tongue River Reservoir for use on the Reservation shall not be considered off-Reservation uses.

2. Subsequent Federal or State Law. All off-Reservation uses of the Tribal Water Right shall comply with the requirements set forth in Section B. of this Article until such time as the statutory or common law of the United States or the State of Montana establishes that off-Reservation uses of Indian water rights may occur without regard to state law.

3. Diversion Facilities.

With respect to diversion or transportation facilities located off the Reservation, the Tribe or persons using the Tribal Water Right shall apply for all permits, certificates, variances and other authorizations required by state laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water. A diversion or use of water in the exercise of the Tribal Water Right may be made only after all permits, certificates, variances or other authorizations applied for pursuant to this paragraph have been obtained.

4. Off-Reservation Uses in Tongue and Rosebud Basins.

a. The Tribe shall provide the State with not less than 180-days advance written notice of any off-Reservation use, transfer, or change of use of the Tribal Water Right:

i. Within the Tongue River basin, or

ii. Utilizing Tongue River water off-Reservation in the Rosebud Creek basin.

b. The notice shall include sufficient documentation to demonstrate that:

i. The proposed use of water is a beneficial use as defined by Montana law in effect at that time;

ii. The proposed means of diversion, and the construction and operation of the diversion works are adequate;

iii. The proposed use, transfer, or change of use will not adversely affect, except with the consent of the owner of such right:

A. Any water right arising under the laws of the United States, or

B. Any right to the use of water established pursuant to the laws of the State; except that, if the portion of the Tribal Water Right that is the subject of the proposed off-Reservation use, transfer or change of use is the storage and exchange right set forth in Article II.A.2.b. of this Compact, the Tribe need only demonstrate that Miles City Decree rights will not be adversely affected by such use, transfer, or change of use.

iv. The proposed use, transfer, or change of use does not cause any unreasonable significant adverse environmental impact; and

v. Proposed uses, transfers, or changes in use in excess of 4,000 acre-feet per year and 5.5 cubic feet per second of water will not:

A. Substantially impair the quality of water for existing uses in the source of water from which the diversion is made;

B. Be made where low quality water which can economically be used is legally and physically available to the Tribe for the proposed use;

C. Create or substantially contribute to saline seep; or

D. Substantially injure fish or wildlife populations in the source of water from which the diversion is made.

c. A proposed use, transfer or change of use of the Tribal Water Right pursuant to Section B.4. of this Article may be challenged:

i. Within 30 days after the expiration of the notice period provided in Section B.4.a. of this Article;

ii. In a court of competent jurisdiction; and

iii. By the State or by a person whose rights are adversely affected by the proposed use, transfer, or change of use.

In any such case, the Tribe shall have the burden of proving by a preponderance of the evidence that it has satisfied the requirements of Section B.4.b. of this Article. A Tribal notice that conforms to the requirements of Section B.4.b. of this Article shall be prima facie evidence of its contents.

5. Off-Reservation Uses Outside Tongue and Rosebud Basins.

Except as provided in Section B.4. of this Article, no person may initiate an off-Reservation use, transfer, or change of use of the Tribal Water Right without first applying for and receiving authorization for the use, transfer, or change of use pursuant to Montana law in effect at the time of the application.

C. State Administration.

1. The State shall administer all rights to the use of surface water and groundwater within the Reservation which are not a part of the Tribal Water Right. The State shall have the final and exclusive jurisdiction to resolve all disputes between users of rights established under state law.

2. Within one year after ratification of this Compact, the State shall notify the Tribe of all existing uses of surface and groundwater for which a permit has been issued by the State in the Tongue River or Rosebud Creek basins. The notice shall state:

a. The person authorized to make the diversion;
b. The amount of water authorized to be diverted annually;
c. The amount of water authorized for annual consumption;
d. The point of diversion;
e. The period of use;
f. The place of use;
g. The uses for which the water may be diverted; and
h. The priority date of the use.

3. The State shall notify the Tribe within sixty days after the end of each quarter year of all new uses of surface and groundwater for which a permit has been issued by the State in the Tongue River or Rosebud Creek basins during the preceding quarter year and of all new uses of water actually commenced pursuant to the laws of the State during that quarter year on each of these sources. The notice shall be in the same format as that prescribed in Section C.2. of this Article.

D. Operation of Tongue River Reservoir.

1. To provide for Tongue River Reservoir operation procedures that are consistent with the purposes of this Compact, a reservoir operation plan shall be developed by a five-member advisory committee. The committee shall have representatives from the State of Montana, the Tongue River Water Users Association, the Northern Cheyenne Tribe, the United States, and a fifth member to be selected by the other four. The advisory committee shall annually agree upon a reservoir operation schedule setting forth proposed uses of storage and direct flow for the year. The Department of Natural Resources and Conservation or its successor shall thereupon be responsible, consistent with the terms of this Compact and other applicable law, for the daily operation of the Reservoir and for implementation of the reservoir operation plan.

2. The reservoir operation plan shall provide for the operation of the project for fish and wildlife purposes depending on the availability of water on an annual basis. This provision shall not create an operational preference for fish and wildlife purposes relative to other project purposes.

3. The Secretary of the Interior shall pay annually to the State an amount to cover the proportionate share of the annual operation, maintenance and replacement (OM&R) costs for the Tongue River Dam allocable to the Tribe's stored water in the Reservoir.

Article IV

Northern Cheyenne-Montana Compact Board

A. Establishment of Board.

There is hereby established the Northern Cheyenne-Montana Compact Board. The Board shall consist of three members: one member appointed by the Governor of the State of Montana; one member appointed by the Northern Cheyenne Tribal Council; and one member selected by the other two members. All members shall be appointed within six months of the ratification date of this Compact and within thirty days of the date any vacancy occurs. Each member shall serve a five-year term and shall be eligible for reappointment. The initial term of each member shall be staggered with one member serving a five-year term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen by lot. Expenses of the members appointed by the State and the Tribe shall be borne by the entity appointing the member. The expenses of the third member and all other expenses shall be borne equally by the Tribe and the State, subject to the availability of funds.

B. Membership.

Should the two appointed members fail to agree on the selection of a third member within sixty days of the ratification date of this Compact or within thirty days after any vacancy occurs, the following procedure shall be utilized:

1. Within five days each member shall nominate three persons to serve as a member of the Board;

2. Within fifteen days thereafter each member shall reject two of the persons nominated by the other member;

3. The chief judge of the United States District Court for the District of Montana shall select the third member of the Board from the remaining two nominees. If the chief judge declines for

any reason to select the third member, the chief justice of the Montana Supreme Court shall make the selection from the remaining two nominees.

C. Quorum and Vote Required.

Two members of the Board shall constitute a quorum if reasonable notice has been provided in advance to the absent member. All Board decisions shall be by a majority of the Board, shall be in writing and, together with any dissenting opinions, shall be served on all parties in the proceeding before the Board, and on the parties to this Compact.

D. Jurisdiction of the Board.

The Northern Cheyenne-Montana Compact Board shall have jurisdiction to resolve controversies over the right to the use of water between users of the Tribal Water Right on the one hand and users of state water rights on the other hand. Such controversies shall include, but shall not be limited to, disputes as to the meaning of this Compact, and disputes concerning the operation of the Tongue River Reservoir as it affects the Tribal Water Right.

E. Powers and Duties.

The Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence. The Tribe, the State, and the United States shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribe, the State, or the United States for enforcing a subpoena issued by its courts in a civil action. The parties to the controversy may present evidence and cross examine any witnesses. The Board shall determine the controversy based on the evidence, and grant any appropriate relief, except money damages. All decisions of the Board shall be by majority and in writing. The Board shall adopt necessary rules and regulations to carry out its responsibilities within six months after its first meeting. All records of the Board shall be open to public inspection except for privileged information.

F. Review and Enforcement of Board Decisions.

1. Decisions by the Board shall be effective immediately, unless stayed for a period of time prescribed by the Board. Any party before the Board may appeal any final decision by the Board to a court of competent jurisdiction within thirty days of such decision. The notice of appeal shall be filed with the Board and served personally or by registered mail upon the Tribe, the State, the United States and all parties to the proceeding before the Board, and all such persons shall thereafter have the right to participate in the appeal.

2. In any appeal, the Board's decision shall be presumed to be valid, and may be vacated by the court only on one of the following grounds:

a. The decision is not supported by substantial evidence;

b. The decision was procured by corruption, fraud or undue means;

c. There was evident partiality or corruption by the Board or by any member;

d. The Board was guilty of misconduct in refusing to hear the dispute, or in refusing to hear evidence pertinent and material to the controversy, or any other clear misbehavior by which the rights of any party have been substantially prejudiced;

e. The Board exceeded its authority under the terms of this Compact; or

f. The decision is contrary to law.

3. Unless an appeal is timely filed as provided in paragraph F.1. of this Article, any decision of the Board shall be confirmed or enforced by any court of competent jurisdiction on petition of the Board, the Tribe, the State, the United States, or any party before the Board in the proceeding in which the decision was made.

4. A court of competent jurisdiction in which a timely appeal is filed pursuant to paragraph F.1. of this Article, or in which a petition to confirm or enforce is filed pursuant to paragraph F.3. of this Article, may order such temporary or permanent relief as it considers just and proper.

5. Any appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to paragraph F.1. of this Article, or in which a petition to confirm or enforce is filed pursuant to paragraph F.3. of this Article, in the manner and to the same extent as from orders or judgments of the court in a civil action.

6. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the court the record of the proceedings before the Board.

G. Waiver of Immunity.

The Tribe, the United States and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, in order to permit the resolution of disputes under this Compact by the Northern Cheyenne-Montana Compact Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribe, the United States, or the State shall not extend to any action for money damages including costs and attorneys' fees.

Article V
Finality and Effectiveness of Compact

A. Ratification and Effectiveness of Compact.

1. Upon ratification by the Northern Cheyenne Tribal Council and the Legislature of the State of Montana, the terms of this Compact may not be altered, voided, or modified in any respect without the consent of the parties; provided, that except as set forth in Section A.2. of this Article, this Compact shall not become effective until ratification by the United States Congress and the completion date occurs, notwithstanding the provisions of Section 85-2-702(2), MCA. If the completion date does not occur on or before December 31, 1997, or any later date agreed to in writing by the parties, this Compact, including all provisions that become effective on the ratification date, shall become null and void without further action by any party. Notwithstanding the provisions of Section 85-2-702(3), MCA, this Compact shall not be included in any preliminary decree or final decree in any State water court proceeding unless and until this Compact becomes effective as set forth in this Article.

2. As between the State and the Tribe, all of the provisions of this Compact shall become effective upon the ratification date except insofar as they:

a. Quantify or provide for the administration of the Tongue River Tribal Water Right;

b. Provide for the management or operation of the Tongue River Reservoir; or

c. Require Congressional authorization.

All of the provisions that do not become effective upon the ratification date shall become effective on the completion date, unless Congress provides otherwise.

B. Incorporation Into Decrees and Disposition of Federal Suits.

Within sixty days after the completion date, the parties shall petition for incorporation of this Compact into a decree in any appropriate State court proceeding commenced in accordance with 43 U.S.C. 666. Upon the issuance of a final decree by the State water court, or its successor, and the completion of any direct appeals therefrom, or upon the expiration of the time for filing any such appeal, the United States, the Tribe, and the State shall within thirty days execute and file joint motions pursuant to Rule 41(a), Fed. R. Civ. P., to dismiss the Tribe's claims, and any claims made by the United States as trustee for the Tribe, in Northern Cheyenne Tribe of the Northern Cheyenne Reservation v. Adsit, et al., No. 75-6-BLG (D. Mont.); United States v. Big Horn Low Line Canal Company, et al., No. 75-34-BLG (D. Mont.); and United States v. Tongue River Water Users Association, et al., No. 75-20-BLG (D. Mont.), (hereinafter collectively referred to as "the federal suits"), with prejudice. This Compact shall be filed as a consent decree in the federal suits only if, prior to the dismissal of the federal suits as provided in this Article, it is finally determined in a judgment binding upon the State of Montana that the State courts lack jurisdiction over, or that the State court proceedings are inadequate to adjudicate, some or all of the water rights asserted in the federal suits.

Article VI
General Provisions

A. Nothing in this Compact shall be so construed or interpreted:

1. To establish the nature, extent, or manner of administration of water rights of any Indian reservation or other federal reservation other than the Northern Cheyenne Reservation;

2. To preclude the acquisition or exercise of a right to the use of water by the Tribe or any individual Indian outside the Reservation by purchase of such right or by acquisition of land, or by application to the State;

3. To preclude the acquisition or exercise of an appropriative right to the use of water under state law by the Tribe or any individual Indian within the Reservation:

a. By purchase of such right or by purchase of land; provided, that water rights acquired by such purchase after the ratification date of this Compact shall be in addition to and shall become part of the Tribal Water Right and shall be governed by this Compact; or

b. By application to the State. Except for applications for non-alluvial groundwater pursuant to Article II.A.4.b., and applications for storage appropriations authorized by paragraph A.8. of this Article, any such application shall not be granted by the State until the Tribal Water Right in the basin where the diversion that is the subject of the application is located has been fully utilized;

4. To determine the relative rights inter sese of persons using water under the authority of the State or the Tribe;

5. To limit in any way the rights of the parties or any other person to litigate any issues or questions not resolved by this Compact;

6. To authorize the taking of a water right which is vested under state or federal law;

7. To create or deny substantive rights through headings or captions used in this Compact;

8. To preclude or to discourage the Tribe from establishing the right to, or contracting for, water from any further enlargements of the Tongue River Dam, or from any future storage facilities that may be built within the Tongue River or Rosebud Creek basins, or in any other water basins;

9. To address or prejudge whether, in any interstate apportionment, the Tribe's water right shall be counted as part of the waters apportioned to the State; or

10. To alter or amend any provisions of the Yellowstone River Compact, Act of October 30, 1951, ch. 629, 65 Stat. 663 (1951).

11. To prohibit the Tribe or the United States from challenging any claims to water in any general adjudication of the Tongue River or Rosebud Creek basins.

B. The parties expressly reserve all rights not granted, recognized or relinquished in this Compact.

C. The Secretary of the Interior shall comply with all aspects of the National Environmental Policy Act, 42 U.S.C. 4331-4335, and the Endangered Species Act, 16 U.S.C. 1531, et seq., and other applicable environmental acts and regulations in implementing this Compact.

Article VII
Tribal Relinquishment of Other Water Claims

A. With the exception of the Tribe's claim to non-alluvial groundwater in paragraph B. of this Article and any rights to water which may exist with respect to land held by the Tribe or a Tribal member outside the present Reservation, the Tribe and the United States as trustee for the Tribe hereby relinquish forever any and all claims, in existence on the ratification date of this Compact, to water within the State of Montana. The relinquishment includes, but is not limited to, any claim for water derived from aboriginal use of land or water, any Indian treaties, any Act of Congress, and any executive act of the United States.

B. The parties intend that the water right as confirmed to the Tribe in Article II is in full satisfaction of its federal reserved water right based on Winters v. United States, 207 U.S. 564 (1908). Notwithstanding the provisions of paragraph A. of this Article, the Tribe retains the right to assert a claim that it has a right, not based on the federal reserved water rights doctrine, to the use of any non-alluvial groundwater underlying the Reservation. In any such action, the Tribe shall be estopped to assert that its right to non-alluvial groundwater is a federal reserved water right, that the Tribal Water Right confirmed in Article II is inadequate to satisfy the purposes for which the Reservation was created, or from collaterally attacking this Compact in any manner. Any right to non-alluvial groundwater established by the Tribe under this paragraph is not subject to this Compact. Nothing in this Compact shall be construed to waive any defenses of the State or any water user to a Tribal claim for non-alluvial groundwater.

Article VIII
Binding Effect

Upon the effectiveness of any provision of this Compact, its terms will be binding:

A. Upon the State and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State of Montana; provided, that for purposes of consent, ratification, or authorization, the validity of consent, ratification, or authorization is to be determined by Montana law;

B. Upon the Tribe and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right to the use of the Tribe's water right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribe, or any right arising under tribal law; provided, that for purposes of consent, ratification, or authorization, the validity of consent, ratification or authorization is to be determined by tribal law; and

C. Upon the United States and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the United States to the use of water in the State of Montana; provided, that for purposes of consent, ratification, or authorization, the validity of consent, ratification or authorization is to be determined by federal law, and further provided that nothing contained in this Compact affects any claim of any Indian tribe, or of persons claiming water through that tribe, or the right of any Indian tribe, or persons claiming water through that tribe, to pursue a claim to any water from any source based on any theory of right or entitlement.

Article IX
Contributions to Settlement

A. The United States agrees to provide $31,500,000 to repair the Tongue River Dam and spillway and to raise the Tongue River Dam spillway crest to secure the Tribe's existing contract water under Article II.A.2.e. and to provide additional storage capacity to secure the Tribe's storage and exchange water right under Article II.A.2.b.

B. The State agrees to provide $16,500,000 to repair the Tongue River Dam and spillway with the understanding that the State's portion will be paid through a combination of cash and federal loans, in proportions to be agreed upon by the parties.

C. The Provisions of this Article are subject to the separate Letter of Agreement dated April 17, 1991, between the State and the United States explaining in detail the allocation of the costs of the project. The State and the United States will enter into a further agreement providing for the expenditure of the contributions and loans of the United States hereunder.

D. The United States agrees to provide $10,000,000 for a Tribal Development Fund payable in equal amounts of $2,000,000 each fiscal year for five years. These funds shall not be distributed on a per capita basis to members of the Tribe and shall only be used for land and natural resources administration, planning and development within the Northern Cheyenne Reservation or for land acquisition by the Tribe within the Northern Cheyenne Reservation.

E. Federal financial contributions to paragraph A of this Article will be budgeted for, subject to the availability of funds, by October 1 of the year following the ratification of this Compact by Congress and the authorization by Congress of the Tongue River Dam project. Federal financial contributions to paragraph D of this Article will be budgeted for, subject to the availability of funds, by October 1 of the second year following the ratification of this Compact by Congress and the authorization by Congress of the Tongue River Dam project.

F. The Tribe and the United States agree to pursue through the normal Bureau of Indian Affairs and Department of the Interior budget process such additional sums as are necessary to implement the terms of this Compact, to develop a Tribal water code, and to provide increased agricultural development on the Reservation. The State agrees to support the efforts of the Tribe and the United States in this regard.

Article X
Legislation

The Parties agree to seek enactment of any legislation necessary to effectuate the provisions and purposes of this Compact, and to defend the provisions and purposes of this Compact from all challenges and attacks; provided, that no provision of the Compact shall be modified as to substance except as may be provided herein.

IN WITNESS WHEREOF the representatives of the State of Montana, the Northern Cheyenne Tribe, and the United States have signed this Compact on the 11th day of June, 1991.

FOR THE STATE OF MONTANA
MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION

....
Jack E. Galt, Chairman Gene J. Etchart

....
Chris D. Tweeten, Vice Chairman Dennis Iverson

....
Carl M. Davis Senator Joseph P. Mazurek

....
Everett C. Elliott Gordon McOmber

....
Gary L. Spaeth

FOR THE NORTHERN CHEYENNE TRIBE

....
FOR THE SECRETARY OF THE INTERIOR FOR THE UNITED STATES ATTORNEY GENERAL

....

History: **En. Sec. 1, Ch. 812, L. 1991.**

85-20-302. Consent to federal act and modification of compact. (1) Pursuant to Article V, section A.1., of the Northern Cheyenne-Montana Compact, section 85-20-301, MCA, the Legislature hereby gives its consent to, ratifies, and adopts the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992 (Public Law 102-374, 106 Stat. 1186). This consent includes:

(a) any amendment to the act that clarifies that environmental compliance costs for the Tongue River Dam Project are the responsibility of the federal government; or

(b) any amendment to section 4(c) of the act that provides that, except for the authorizations contained in subsections 7(b)(1)(A), 7(b)(1)(B), and 7(e), the authorization of appropriations in the act are not effective until such time as the Montana water court enters and approves a decree as provided in subsection 4(d) of the act.

(2) The provisions of the compact that are inconsistent with the federal act or with the amendments specified in subsections (1)(a) and (1)(b) of this section shall be deemed to be modified to the extent necessary to conform therewith.

History: **En. Sec. 1, Ch. 7, Sp. L. November 1993.**

Part 4
United States Park Service-Montana Compact

85-20-401. United States National Park Service-Montana compact ratified. The compact entered into by the state of Montana and the United States National Park Service and filed with the secretary of state of the state of Montana under the provisions of 85-2-702 on May 12, 1993, is ratified. The compact is as follows:

WATER RIGHTS COMPACT
STATE OF MONTANA
UNITED STATES OF AMERICA, NATIONAL PARK SERVICE

This Compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims to water for certain lands administered by the National Park Service within the State of Montana at the time of the effective date of this Compact.

A Compact between the State of Montana and the United States of America regarding water rights for National Park Service lands was executed January 31, 1994. The parties were unable to finalize agreement on quantification of the water rights for Bighorn Canyon National Recreation Area and the Little Bighorn Battlefield National Monument prior to the completion of the Compact executed January 31, 1994. This Compact is the final agreement regarding the water rights attributable to these two NPS Units.

RECITALS

WHEREAS, in 1979 the United States filed in the United States District Court for the District of Montana several actions to adjudicate, inter alia, its rights to water with respect to Glacier National Park, see United States v. Aageson, No. CV-79-21-GF; United States v. Abell, No. CV-79-33-M; and United States v. AMS Ranch, Inc., No. CV-79-22-GF.

WHEREAS, the State of Montana, in 1979 pursuant to Title 85, Chapter 2 of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, 85-2-703, MCA, provides that the state may negotiate settlement of claims by the federal government to non-Indian reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the existing National Park Service units in the State of Montana, including those reserved water rights necessary to preserve Glacier National Park and Yellowstone National Park unimpaired for future generations;

WHEREAS, the United States, in quantifying its reserved water rights recognizes the need to accommodate the interests of the state and its citizens by providing for the development and use of water in the vicinity of the Park units to the extent that it is possible to do so without materially affecting the rights and interests of the United States;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§ 516-17 (1968);

WHEREAS The Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of Interior pursuant to 43 U.S.C. § 1457 (1986, Supp. 1992);

NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE I
DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

(1) "Abstract" means the copy of the document entitled "Abstract of National Park Service Water Rights" referenced in this Compact as Appendix 1 [and] the copy of the document entitled "Abstract of National Park Service Water Rights - BCNRA and LBBNM" referenced in this Compact as Appendix 2.

(2) "Big Hole National Battlefield" or "BHNB" means those lands located in Montana that were acquired pursuant to, or withdrawn and reserved by Executive Order No. 1216 of June 23, 1910; Presidential Proclamation No. 2339 of June 29, 1939, 53 Stat. 2544; and Act of May 17, 1963, 77 Stat. 18.

(3) "Bighorn Canyon National Recreation Area" or "BCNRA" means those lands located in Montana that were acquired pursuant to, or designated as such by Act of October 15, 1966, 80 Stat. 913.

(4) "Bureau" means the Montana Bureau of Mines and Geology or its successor.

(5) "Category 1 stream" means a stream that headwaters on the reserved land administered by the National Park Service.

(6) "Category 1a stream" means a stream that headwaters on the reserved land administered by the National Park Service and which, in part, carries water that drains non-federal land within the boundaries of the same reserved land.

(7) "Category 2 stream" means a stream that headwaters in a Wilderness Area in Montana outside the respective Park unit which flows into the reserved land administered by the National Park Service, and which is not the source for a consumptive use water right recognized under

state law on the effective date of this Compact and drains a hydrologic basin that contains only federal land.

(8) "Category 3 stream" means a stream that headwaters in Montana outside the reserved land administered by the National Park Service that flows into the reserved land and is the source for consumptive use water rights recognized under state law on the effective date of this Compact.

(9) "Category 4 stream" means a stream that is treated individually due to special circumstances.

(10) "Consumptive use" means use of surface water not considered a non-consumptive use under (26) and use of groundwater which is shown to be hydrologically connected to surface water pursuant to Article II.

(a) "Current consumptive use", when referring to water rights recognized under state law only, means all consumptive use water rights recognized under state law with a priority date before January 1, 1993 [, with respect to BHNB, GNP, or YNP and] on or before the effective date of the compact [with respect to BCNRA and LBBNM].

(b) "Future consumptive use", when referring to a water right recognized under state law only, means a consumptive use water right recognized under state law with a priority date on or after January 1, 1993 [, with respect to BHNB, GNP, or YNP and] after the effective date of the compact [with respect to BCNRA and LBBNM].

(11) "Credible information" means credible evidence sufficient to support a prima facie basis for the theory asserted.

(12) "Crow Tribal Water Rights" means those senior reserved water rights and any aboriginal water rights held by the United States in trust for the Crow Tribe which are being quantified as part of the general adjudication of water rights in Montana.

(13) "Curtailment" means action pursuant to this Compact to reduce or shut-off diversions by a junior water user to satisfy the senior instream flow right of the National Park Service.

(14) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

(15) "Effective date of this Compact" means the date of the ratification of the Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever is later.

(16) "Glacier National Park" or "GNP" means those lands located in Montana that were acquired pursuant to, or withdrawn and reserved by the Act of May 11, 1910, 36 Stat. 354; Act of February 27, 1915, 38 Stat. 814; and Act of April 11, 1972, 86 Stat. 120.

(17) "Grant Kohrs Ranch National Historic Site" means those lands acquired by the United States and designated as such pursuant to Public Law 92-406, August 25, 1972.

(18) "Groundwater" means water that is beneath the ground surface.

(19) (a) "Hydrologically connected" for the purposes of Articles II and III, means groundwater that is connected to surface water such that appropriation at the proposed rate will cause a calculable reduction in surface water flow. A "calculable reduction in surface water flow" means a theoretical reduction based on credible information as opposed to a measured reduction.

(b) "Hydrologically connected" for the purposes of Article IV, means groundwater that is considered to be connected to the hydrothermal system within the reserved land of Yellowstone National Park based on scientific evidence according to the procedures in Article IV.

(20) "Hydrothermal system" means the groundwater system, including cold water recharge, transmission and warm water discharge that is hydrologically connected to the hydrothermal features within the reserved land of Yellowstone National Park.

(21) "Hydrothermal discharge water" means groundwater with a temperature in excess of 59 degrees Fahrenheit that is hydrologically connected to the hydrothermal system within the reserved land of Yellowstone National Park.

(22) "Hydrothermal feature" means a surface manifestation of a hydrothermal system, including but not limited to: hot springs, geysers, mud pots, and fumaroles.

(23) "Instream flow" means the water that the parties agree shall remain in the stream in satisfaction of the United States' reserved water right for the purposes of the reserved land.

(24) "Little Bighorn Battlefield National Monument" or "LBBNM" means those lands located in Montana that were acquired pursuant to or withdrawn and reserved by Presidential Proclamation of December 7, 1886, and by Act of March 22, 1946, 60 Stat. 59.

(25) "Nez Perce National Historical Park" means those lands in Montana acquired and added to the Nez Perce National Historical Park by Congress on October 30, 1992, pursuant to Public Law 102-576.

(26) (a) "Non-consumptive use" when applied to a mining or hydropower use for which a water right is recognized under state law with a priority date on or after January 1, 1993, [with respect to BHNB, GNP, or YNP and] after the effective date of this compact [with respect to BCNRA and LBBNM], means an appropriation that does not cause a net loss in the surface source of supply, and where substantially all of the diverted water becomes return flow with little or no delay between the time of diversion and the time of return, and without adverse effect on the quantity or quality of water necessary to fulfill the purposes of the reserved land.

(b) "Non-consumptive use" when applied to a water right recognized under state law other than a mining or hydropower use with a priority date on or after January 1, 1993, [with respect to BHNB, GNP, or YNP and] after the effective date of this compact [with respect to BCNRA and LBBNM], or a water right recognized under state law with a priority date before January 1, 1993, [with respect to BHNB, GNP, or YNP and] on or before the effective date of this compact [with respect to BCNRA and LBBNM], means a water right considered to be non-consumptive by the decree, permit or law authorizing the use.

(27) "Parkman Sandstone" means the unit as defined in Moulder, E.A., Klug, M.F., Morris, D.A., and Swenson, F.A. (1960) "Geology and Ground-Water Resources of the Lower Little Bighorn River Valley Big Horn County, Montana," USGS Water Supply Paper 1487, where it occurs along the Little Bighorn River and its tributaries between the Montana-Wyoming line and the Little Bighorn Battlefield National Monument.

(28) "Parties" means the State of Montana and the United States.

(29) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

(30) "Quaternary Alluvium" means the unit as defined in Moulder, E.A., Klug, M.F., Morris, D.A., and Swenson, F.A. (1960) "Geology and Ground-Water Resources of the Lower Little Bighorn River Valley Big Horn County, Montana," USGS Water Supply Paper 1487, where it occurs along the Little Bighorn River and its tributaries between the Montana-Wyoming line and the Little Bighorn Battlefield National Monument.

(31) "Quaternary Terrace Deposits" means the unit as defined in Moulder, E.A., Klug, M.F., Morris, D.A., and Swenson, F.A. (1960) "Geology and Ground-Water Resources of the Lower Little Bighorn River Valley Big Horn County, Montana," USGS Water Supply Paper 1487, where it occurs along the Little Bighorn River and its tributaries between the Montana-Wyoming line and the Little Bighorn Battlefield National Monument.

(32) "Recognized under state law" when referring to a water right or use means a water right or use protected by state law, but does not include state recognition of a federal or tribal reserved water right.

(33) "Return flow" means the portion of water diverted from a source that is returned to the same source, at or near the point of diversion.

(34) "Scientific evidence" means geologic, geophysical, geochemical and hydrologic information.

(35) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "state" means the Director of the Montana Department of Natural Resources and Conservation or his or her designee.

(36) "Technical Oversight Committee" or "TOC" means the scientific committee established by Article IV of this Compact.

(37) "Tributary to" means surface water that originates in the same hydrologic basin or subbasin as the stream referred to and which contributes water to the same stream.

(38) "Unincorporated municipality" includes but is not limited to a rural special improvement district or any other entity that serves community water needs.

(39) "United States" means the federal government and all officers, agencies, departments and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of the Interior, or his or her designees.

(40) "Working Group Report" means the Abridged and Unabridged reports by Custer, S., et. al. dated January 5, 1993, and titled Recommended Boundary for Controlled Groundwater Area in Montana Near Yellowstone National Park and accompanying maps.

(41) "Yellowstone National Park" or "YNP" means those lands located in Montana that were acquired pursuant to, or withdrawn and reserved for Yellowstone National Park by the Act of March 1, 1872, 17 Stat. 32; Act of May 26, 1926, 44 Stat. 655; Act of March 1, 1929, 45 Stat. 1435; Act of April 19, 1930, 46 Stat. 220; and Proclamation No. 2013 of October 20, 1932, 47 Stat. 2537.

ARTICLE II
IMPLEMENTATION

A. Abstract:

Concurrent with this Compact, the parties have prepared an Abstract, a copy of which is referenced as Appendix 1, which is a specific listing of all of the United States' water rights [for Big Hole National Battlefield, Glacier National Park, and Yellowstone National Park, and] prepared an Abstract, a copy of which is referenced as Appendix 2, which is a specific listing of all of the United States' water rights for Bighorn Canyon National Recreation Area and the Little Bighorn Battlefield National Monument that are described in this Compact and quantified in accordance with this Compact. The parties prepared the Abstract to comply with the requirements for a final decree as set forth in 85-2-234(4) and (7), MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstract are subject to the terms of this Compact. In the event of a discrepancy between a right listed in the Abstract and that same right as quantified in accordance with Articles II and III of this Compact, the parties intend that the quantification in accordance with Articles II and III of this Compact shall be reflected in a final decree.

B. Method of Allocation of Water on Category 3 and 4 Streams and of Determining Rights Subject to Curtailment on the Little Bighorn River and its Tributaries:

This section explains the method of quantification of the reserved instream flow water rights of the United States for Category 3 and 4 streams and the method of calculating the quantity of consumptive use pursuant to state law within a basin to which the United States agrees to subordinate its reserved instream flow water right. The method set forth in this section shall be used to determine whether the limits on consumptive use pursuant to state law set forth in Article III have been reached and whether a water right on the Little Bighorn River and its tributaries upstream from the LBBNM shall be subject to curtailment to satisfy the reserved instream flow water right for LBBNM. Addition to the Abstract of a reserved instream flow water right on a stream inadvertently omitted by the parties or reclassification of a stream due to a water right recognized under state law and inadvertently omitted by the parties shall be consistent with this section and shall not be deemed a modification of this Compact.

1. Allocation to Instream Flow:

With the exception of the reserved instream flow rights for LBBNM, the allocation of water to instream flow on Category 3 and 4 streams is arrived at using the following method as explained in general terms:

a. The United States' reserved water right for instream flow includes the entire flow of that stream within the State of Montana at the point where the stream flows over or forms the boundary of the specified reserved land after: (1) all consumptive use water rights of any agency of the United States recognized under federal or state law are satisfied; and (2) subordination of the reserved water right for instream flow to water rights recognized under state law as set forth in and limited by Article III and more specifically in the Abstract.

b. Actual use of water in Wyoming or Canada shall not diminish the quantity of water designated for consumptive use pursuant to state law as set forth in Article III.

2. Method of Calculation of Consumptive Use Rights Recognized Under State Law:
To determine whether water is available for appropriation for consumptive use pursuant to state law on Category 3 and 4 streams, and for determining whether the limit on subordination of the United States' water rights to consumptive uses has been reached, the following provisions shall apply:

a. Tributary Water: The calculation of total consumptive use on a Category 3 or 4 stream shall include all current and future consumptive use, recognized under state law, of surface water tributary to the stream to the point it enters the reserved land. The limits on total consumptive use on a Category 4 stream that forms the boundary of the reserved land shall include all current and future consumptive use recognized under state law, of surface water tributary to the stream to the most downstream point that the stream forms the boundary of the reserved land.

b. Groundwater: [The following sections i., ii., and iii. shall apply to BHNB, GNP, and YNP.] The following sections iii. and iv. shall apply to BCNRA. The following sections iii. and v. shall apply to LBBNM.

i. An exemption from state permit requirements for wells or developed springs shall not apply to appropriations within a basin tributary to the reserved portion of a Category 3 or 4 stream after the effective date of this Compact, provided that the registration process set forth in Article II, section B.2.b.ii.(3)(b) shall apply to applications for a permit for a well of 35 gpm or less, not to exceed 10 acre-feet per year. In addition, all groundwater appropriations within the Yellowstone Controlled Groundwater Area shall be subject to Article IV.

ii. The calculation of total consumptive use on a Category 3 or 4 stream shall include appropriations of groundwater as follows:

(1) Pre-January 1, 1993: An appropriation of groundwater with a priority date before January 1, 1993, shall not be included in the calculation of total consumptive use.

(2) January 1, 1993 - Effective Date: An appropriation of groundwater with a priority date on or after January 1, 1993, but before the effective date of this Compact shall be included in the calculation of total consumptive use if the following procedural requirements are met and the appropriation is found to be hydrologically connected to surface water tributary to the reserved portion of a Category 3 or 4 stream.

(a) Within 120 days after the effective date of this Compact, the Department shall provide the United States with notice of all groundwater appropriations in drainages tributary to the reserved portion of a Category 3 or 4 stream that, according to the records of the Department, have a priority date on or after January 1, 1993 and before the effective date of this Compact.

(b) Up to 120 days following mailing of such notice the United States shall provide the Department with credible information that a groundwater appropriation included in the notice is hydrologically connected to surface flow tributary to the reserved portion of a Category 3 or 4 stream.

(c) Within 60 days of receipt of such information, the Department shall issue an order stating that (1) the appropriation is hydrologically connected to surface water tributary to the Category 3 or 4 stream; and (2) the action to be taken with respect to the appropriation. The order is effective within 60 days of issuance unless the appropriator enters an appearance to contest the order. If credible information of hydrologic connection has not been provided by the United States, the Department shall issue an order stating its determination and reasons therefore.

(d) If the appropriator enters an appearance to contest the order, the Department shall (1) issue an order staying use of the appropriation pending a final decision on the matter by the Department only if the limits on total consumptive use for that drainage have been reached; (2) set a date for a hearing; and (3) proceed pursuant to the provisions for a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated, provided that the burden of proving hydrologic connection shall be as set forth in Article II, section B.2.b.[ii.](3). The Department shall, whenever possible, consolidate any proceedings on the groundwater application pursuant to Article IV with any proceeding made necessary by this Article.

(3) Post-Effective Date: An appropriation of groundwater recognized under state law with a priority date after the effective date of this Compact shall be included in the calculation of total consumptive use if the following conditions apply:

(a) Wells in excess of 35 gallons per minute or 10 acre-feet per year: The limit on total consumptive use shall include groundwater appropriation by a well or developed spring with a permit amount in excess of 35 gpm or any well with a volume of use greater than 10 acre-feet per year, including a combined appropriation from the same source from two or more wells or developed springs that exceeds these limitations, unless the applicant is able to show by a preponderance of the evidence that the appropriation is not hydrologically connected to surface flow tributary to the reserved portion of a Category 3 or 4 stream.

(i) The applicant shall submit credible information, including a report to the Department prepared by a professional qualified in the science of groundwater hydrology verifying that the appropriation is not hydrologically connected to surface flow tributary to the reserved portion of a Category 3 or 4 stream. If the applicant fails to submit the report, the application shall be considered defective and shall be returned to the applicant for completion as provided by state law.

(ii) The Department shall provide notice of the proposed appropriation and a copy of the report to the United States concurrent with notice pursuant [to] 85-2-307, MCA.

(iii) Within 60 days of the mailing of notice, the United States shall file an objection to the proposed appropriation on the basis that it is hydrologically connected to surface water.

(iv) The Department shall not exclude the appropriation from the limits on total consumptive use unless the applicant proves by a preponderance of the evidence that the proposed appropriation is not hydrologically connected to surface flows tributary to the reserved portion of the Category 3 or 4 stream. In doing so the Department shall make a specific finding on the adequacy of the report provided by the applicant.

(v) If the proposed appropriation is determined not to be hydrologically connected to surface water, or if the limit on consumptive use has not been reached, the Department may issue a permit in accordance with state law and the applicant may complete the appropriation.

(b) Wells of 35 gallons per minute or less and 10 acre-feet per year or less:

(i) An applicant for an appropriation of groundwater of 35 gpm or less, not to exceed 10 acre-feet per year shall register for a permit by filing a form prescribed by the department.

(ii) The Department shall provide notice of the registration for a permit to the United States within 30 days of the filing. Within 30 days of the receipt of notice, the United States may file an objection to the application on the basis that the proposed appropriation is of groundwater that is hydrologically connected to surface flow tributary to the reserved portion of a Category 3 or 4 stream.

(iii) As long as the limit on consumptive use rights for a Category 3 or 4 stream has not been reached, the calculation of total consumptive use shall not include groundwater appropriations by well or a developed spring of 35 gallons per minute or less that do not exceed 10 acre feet per year unless the United States shows by a preponderance of the evidence that the proposed appropriation is hydrologically connected to the reserved portion of a Category 3 or 4 stream. If the United States meets this burden, the Department shall include the appropriation in the calculation of total consumptive use.

(iv) After the limit on consumptive use rights has been reached on a particular stream, the necessary showing by the United States' shall be to file an objection and come forward with credible information showing that the proposed appropriation is hydrologically connected to surface flows tributary to the reserved portion of the Category 3 or 4 stream. If the United States makes such a showing, the Department shall consider the application under the criteria in Article II, section B.2.b.[ii.](3)(b)(v) and (vi).

(v) The Department shall not exclude the appropriation from the limits on total consumptive use unless the applicant proves by a preponderance of the evidence that the proposed appropriation is not hydrologically connected to surface flows tributary to the reserved portion of the Category 3 or 4 stream.

(vi) If the proposed appropriation is determined not to be hydrologically connected to surface water the Department may issue a permit in accordance with state law and the applicant may complete the appropriation.

iii. Within 2 years after the effective date of this Compact, the Department, in consultation with the United States, is directed to promulgate rules as may be necessary to implement Article II, section B.2.b. Said rules shall not alter the rights or obligations of the parties hereto.

iv. The calculation of total future consumptive use on Category 3 or 4 streams at BCNRA shall include appropriations of groundwater as follows:

(1) The calculation of total future consumptive use shall not include appropriation of groundwater by means of a well or developed spring with an appropriation of 35 gallons per minute (gpm) or less that does not exceed 10 acre feet per year (afy).

(2) The limit on total consumptive use shall not include an appropriation of groundwater by means of a well or developed spring with a permit amount in excess of 35 gpm or with a volume of use greater than 10 afy, including a combined appropriation from the same source from two or more wells or developed springs that exceeds these limitations, unless the United States shows by a preponderance of the evidence that the proposed appropriation is hydrologically connected to surface water tributary to the reserved portion of a Category 3 or 4 stream. If the United States meets this burden, the Department shall include the appropriation in the calculation of total consumptive use.

(a) The Department shall provide notice of the proposed appropriation to the United States concurrent with notice pursuant to 85-2-307, MCA.

(b) Within 60 days of the mailing of notice, the United States may file an objection to the proposed appropriation on the basis that it is hydrologically connected to surface water.

(c) If the proposed appropriation is determined not to be hydrologically connected to surface water, or if the limit on consumptive use has not been reached, the Department may issue a permit in accordance with state law and the applicant may complete the appropriation.

v. Determination of whether an appropriation of groundwater after the effective date of the this Compact shall be subject to a curtailment to satisfy the instream flow water right at LBBNM shall be made as follows:

(1) Groundwater appropriations subject to curtailment shall not include an appropriation of groundwater for stock or domestic purposes by means of a well or developed spring with an appropriation of 35 gpm or less that does not exceed 10 afy.

(2) Groundwater appropriations subject to curtailment to satisfy the 51 cfs instream flow water rights for LBBNM shall not include an appropriation of groundwater by means of a well or developed spring with a permit amount in excess of 35 gpm or with a volume of use greater than 10 afy, including a combined appropriation from the same source from two or more wells or developed springs that exceeds these limitations, unless the United States shows by a preponderance of the evidence that the proposed appropriation is hydrologically connected to the Little Bighorn River or its tributaries upstream from LBBNM.

(a) The Department shall provide notice of the proposed appropriation to the United States concurrent with notice pursuant to 85-2-307, MCA.

(b) Within 60 days of the mailing of notice, the United States may file an objection to the proposed appropriation on the basis that it is hydrologically connected to surface water.

(c) If the proposed appropriation is determined not to be hydrologically connected to surface water the Department may issue a permit in accordance with state law and the applicant may complete the appropriation.

(d) If the proposed appropriation is determined to be hydrologically connected to surface water the Department may issue the permit in accordance with state law with notice that the appropriation is subject to curtailment to satisfy the instream flow water right of the LBBNM and the applicant may complete the appropriation.

(3) Groundwater appropriations subject to curtailment to satisfy the 950 cfs instream flow water rights for LBBNM shall not include an appropriation of groundwater by means of a well or developed spring with a permit amount in excess of 35 gpm or with a volume of use greater than 10 afy, including a combined appropriation from the same source from two or more wells or developed springs that exceeds these limitations, unless the United States shows by a preponderance of the evidence that the proposed appropriation is hydrologically connected to the Little Bighorn River or its tributaries upstream from LBBNM and the appropriation is completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone.

(a) The Department shall provide notice of the proposed appropriation to the United States concurrent with notice pursuant to 85-2-307, MCA.

(b) Within 60 days of the mailing of notice, the United States may file an objection to the proposed appropriation on the basis that it is hydrologically connected to surface water and the proposed appropriation is to be completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone.

(c) If the proposed appropriation is determined not to be hydrologically connected to surface water or not to be completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone the Department may issue a permit in accordance with state law and the applicant may complete the appropriation.

(d) If the proposed appropriation is determined to be hydrologically connected to surface water and to be completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone the Department may issue the permit in accordance with state law with notice that the appropriation is subject to curtailment to satisfy the instream flow water right of the LBBNM and the applicant may complete the appropriation.

c. Effect of Decree in Calculation of Consumptive Use: Except as provided in Article II, section G., for the purposes of this Compact, the flow rate of a consumptive use shall be as finally decreed in a general adjudication, or recognized under state law until such final decree. At each stage in an adjudication, the allocation to current use as set forth in Article III and more specifically in the Abstract shall be adjusted to reflect the decreed amount.

d. Abandonment: When a consumptive use right recognized under state law on a Category 3 or 4 stream is abandoned and such abandonment causes water to become available for appropriation within the limits of the total amounts of water allocated to consumptive use rights recognized under state law established for that stream by Article III, the increment of water below that limit is available for new appropriation in accordance with state law and this Compact. State law governs the issue of whether an abandonment has occurred.

e. Non-Consumptive Use: The limit on total consumptive use rights recognized under state law shall not include non-consumptive uses as defined by this Compact.

C. Subordination of Instream Flow Right:

1. The United States agrees to subordinate its reserved water right for instream flow to consumptive uses calculated according to this Article in a manner that is specific to each stream on which a reserved water right is described. This subordination is set forth for each stream in Article III. Curtailment of uses to which the reserved water rights described in this Compact have not been subordinated during periods of low flow shall proceed on the basis of priority and may be initiated in a state or federal court of competent jurisdiction pursuant to Article II, sections I and K.

2. The reserved water rights described in this Compact shall not be subordinate to water rights which were forfeited by 85-2-212 [or] 85-2-226 as interpreted in In the Matter of the Adjudication of the Water Rights within the Yellowstone River, 253 Mont. 167, 832 P.2d 1210 (1992), nor shall any claimant of such forfeited water right have standing, based solely on such claimed right, to object to this Compact or any reserved water right described in this Compact, provided that water allocated to future consumptive use pursuant to Article III[B.] of this Compact may be used to satisfy claims filed pursuant to 85-2-221(3), MCA in order of priority.

D. Location of Instream Flow Rights: The United States' reserved water rights for instream flow apply to the portion of the Categories 1 through 4 streams specified in this Compact that flow over or form the boundary to reserved land administered by the National Park Service.

E. Change in Instream Flow Right: Except as provided in Article II, section J.2.b., the water rights dedicated to instream flow by this Compact shall not be changed to any other use.

F. Prohibition on Future Impoundments: With the exception of the North Fork of the Big Hole River and its tributaries, no new impoundments may be permitted on the mainstem of a Category 2, 3, or 4 stream upstream of, or along, the portion of the stream for which a water right for instream flow is described in this Compact [and] no new impoundments may be permitted on the mainstem of the Little Bighorn River in Montana upstream of the LBBNM after the effective date of this Compact. This prohibition shall include impoundments that are exempt from permit requirements under state law. Reclamation, repair or rehabilitation of an existing impoundment shall not be considered a new impoundment, provided that without the consent of the United States, reclamation, repair or rehabilitation shall not cause the impoundment to exceed the original constructed capacity of the impoundment. This prohibition shall not apply to impoundments constructed to store a Tribal water right or to implement settlement of litigation regarding quantification of a Tribal water right. On Category 3 and 4 streams for which an instream flow right is described for periods of low flow as set forth in Article III, sections G.3.c. and d., such water right has not been subordinated to a new water right with the method of diversion as an impoundment on the mainstem of the stream with a priority date on or after January 1, 1993, but before the effective date of this Compact.

G. Management to Maximize Use by Montana Water Users of the Water Allocated to Consumptive Use Rights Recognized Under State Law: If any type of conservation or water distribution plan which includes measurement of actual water use, including use pursuant to rights recognized under state law with a priority date before January 1, 1993, [with respect to BHNB, GNP, and YNP and] before the effective date of this compact [with respect to BCNRA and LBBNM], is adopted pursuant to state law, the limits established for consumptive use appropriated pursuant to state law shall apply to actual measured use, not permitted and decreed or claimed rights, provided that records of actual use be made available to the United States on request and provided further that, such plan shall not diminish the reserved water right of the United States as described in this Compact.

H. Basin Closure

1. Except as provided in Article II, section B.2.d., in the following drainage basins upstream of the portion of the stream for which a reserved water right for instream flow is described in this Compact, the Department shall not process or grant an application or registration for a permit to appropriate or to reserve water for future consumptive use as defined by this Compact once the limits on consumptive use tabulated in Article III and set forth more specifically in the Abstract are reached:

Big Hole National Battlefield:
North Fork of the Big Hole River
Big Horn Canyon National Recreation Area:
Dry Head, Deadman, Davis and Layout Creeks
Glacier National Park:
North Fork of the Flathead River
Middle Fork of the Flathead River
Yellowstone National Park:
Bacon Rind, Buffalo, Cottonwood, Coyote, Hellroaring, Little Cottonwood, Snowslide, Crevice, Dry Canyon, Slough, Tepee, and Soda Butte Creeks, and the Gallatin, Madison, and Yellowstone Rivers

2. If a temporary or permanent basin closure is enacted under state law for a drainage basin or subbasin for which future consumptive water use is limited under this Compact, the most restrictive measures applicable to consumptive use of surface or groundwater shall control.

I. Enforcement of Water Right

1. The United States, the state, or the holder of a water right recognized under state law, may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' reserved water right described by this Compact, and a holder of a water right recognized under state law. Resolution of the controversy shall be governed by the terms of this Compact where applicable, or to the extent not applicable, by applicable state or federal law.

2. The United States agrees that a water commissioner appointed by a state or federal court of competent jurisdiction, or other official authorized by future changes in law, may enter a federal reservation for which a water right is described in this Compact for the purpose of data collection, including the collection of information necessary for water distribution on or off the federal reservation, and to inspect structures for the diversion and measurement of water described in this Compact for consumptive use and for the measurement of instream flow. The terms of entry shall be as specified in an order of a state or federal court of competent jurisdiction.

3. The Department or the Bureau may enter a federal enclave for which a reserved water right is described in this Compact, at a reasonable hour of the day, for the purposes of data

collection on water diversion and stream flow or inspection of devices maintained by the United States pursuant to this Compact. The Department or Bureau shall notify the United States by certified mail or in person, at least 24 hours prior to entry.

4. The United States may request an investigation by the Department of a diversion located upstream of the reserved portion of a stream for which a reserved water right is described in this Compact. The Department may investigate. If an investigation occurs, the United States may accompany the Department.

5. The United States shall maintain structures, including wellhead equipment and casing, for the diversion and measurement of water authorized for consumptive use by this Compact. The United States shall maintain the devices it deems necessary for enforcement of its reserved water right for instream flow described in this Compact. The United States shall install and maintain a rated gauge to measure instream flows in the Little Bighorn River. The gauge on the Little Bighorn River shall be on the reach of the river which forms the boundary of the LBBNM, the exact location of which shall be at the discretion of the NPS. The NPS shall resurvey the channel cross section as necessary to maintain gauge accuracy, but in any event not less frequently than every three (3) years. The United States may not seek curtailment of junior water uses unless the channel has been resurveyed within three (3) years of the date on which curtailment is sought.

6. A person who violates or refuses or neglects to comply with the provisions of this Compact, an order of the Department pursuant to this Compact, or an action by the Bureau pursuant to this Compact is subject to the penalties provided by state law, including but not limited to, revocation of a permit issued pursuant to Article IV after the effective date of this Compact.

7. For any appeal to state court of an administrative decision authorized by this Compact, venue shall be the First Judicial District in Helena and the review shall be conducted according to the procedures for judicial review of contested cases under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated.

8. In any contested case proceeding held under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated, pursuant to this Compact, the common law and statutory rules of evidence shall apply only upon stipulation of all parties to a proceeding.

J. Change in Use

1. Change in Use Defined: For the purpose of this Article, the following actions affecting the use of a reserved water right for consumptive use described in this Compact shall be considered a change in use:

a. An action that alters type of use, place of use, point of diversion, place or means of storage, period of use or point of return flow that will:

i. increase the net depletion on a source; or

ii. adversely affect water quality at the point the reserved water right ends; or

iii. result in a change in point of diversion or point of return flow relative to a holder of a water right recognized under state law; or

iv. change the point of diversion from groundwater to surface water, or from surface to groundwater; or

v. in any other manner, adversely affects the reasonable exercise of a water right that is recognized under state law.

b. The exercise of a reserved water right to future consumptive use as authorized by this Compact shall not be considered a change in use.

2. Instream flow: Reserved water rights specified in this Compact for instream flow shall not be subject to change to any other use, provided that:

a. the emergency use of water for fire suppression as provided for in Article III.H. shall not be deemed a change or alteration in use, or violation of a reserved water right for instream flow; and

b. the United States may seek to appropriate water for a consumptive use on a source for which no consumptive use is described in this Compact by seeking a permit under state law for consumptive use, provided that the water right granted shall not be counted against the limits on allocation for state consumptive use water rights imposed by this Compact. The water right so acquired shall be administered in accordance with Article V, section B.

3. Consumptive uses: The United States may take action affecting the use of its consumptive use water rights provided that (1) the action shall be in fulfillment of the purposes of the reservation; (2) the total use shall not exceed the amount described in this Compact; and (3) the action shall not adversely affect a water right that is recognized under state law.

4. Notice of intent to change use: At least 180 days prior to a change in use, the United States agrees to provide notice to the Department.

a. The notice shall contain the facts pertinent to the proposed change including, where applicable:

i. The location of a new point of diversion.
ii. The new source of water.
iii. The new means of diversion.
iv. If a well is involved, the depth and locations of the old and new well.
v. The new use and its impact on actual consumption and water quality.
vi. If the change includes storage, the location, period and capacity of the storage facility.
vii. An estimate of when the change will be effective.
viii. A map showing the existing system and the proposed change.

b. At least 120 days prior to the proposed change, the United States agrees to publish the notice required by Article II, section J.4.a. with a statement that within 60 days following publication or service of notice, relief may be sought in a state or federal court of competent jurisdiction, once in a newspaper of general circulation in the area of the source, and to serve the notice by first-class mail on interested and potentially affected persons as identified by the records of the Department, including:

i. an appropriator of water or applicant for or holder of a permit who, according to the records of the Department, may be affected by the proposed appropriation;
ii. a purchaser under contract for deed that, according to the records of the Department, may be affected by the proposed appropriation;
iii. any public agency that has reserved water in the source recognized under state law; and
iv. a federal agency or Tribe that claims a reserved water right or other water rights in the source.

c. On request by the United States, the Department shall provide the information contained in its records identifying any person potentially affected by the proposed change. The United States agrees to reimburse the Department for the expense of providing this information.

d. In the event that future changes in state law establish a method of notice of a proposed change in use to interested and potentially affected persons other than by first-class mail, the United States may alter the method of notification accordingly.

e. Prior to the actual change, the United States agrees to provide the Department with proof of notice by affidavit.

5. Objection to proposed change: Within 60 days following the notice pursuant to Article II, section J.4.b., the Department or any other person may bring an action against the proposed change in use in a state or federal court of competent jurisdiction, if a property right, water right, or other interest protected under state law would be adversely affected, or if the proposed change is not in compliance with this Compact.

6. Notice of Change:

a. The United States agrees to notify the state and provide a copy of the final order within 60 days of its entry by a state or federal court of competent jurisdiction resolving any objections to the change in use of a federal reserved water right described in this Compact,

b. The United States agrees to provide the state with notice of completion of the change within 60 days after the completion.

7. Reporting by the United States: For any action affecting the use of a consumptive right whether or not such action is deemed a change in use, the United States agrees to provide the following information to the Department:

a. Well log: For a use that includes the drilling of a well or enlargement of an existing wellbore, the United States agrees to provide a well log to the state within 60 days of the completion of the well.

b. Emergency Use: Within 60 days after the commencement of a temporary emergency use for fire suppression described in Section III.H. of this Compact, the United States agrees to notify the state of the use to which the water was put, the dates of use, and the estimated amount of water used.

c. Annual Report: Between April 1 and May 1 of each year, the United States agrees to provide the Department with a report on (1) actions during the preceding year affecting the use of a consumptive use right described in this Compact, regardless of whether the action is deemed a change in use pursuant to Article II, section J.1.; (2) the initiation of new uses that were completed during the preceding year; and (3) any data and documents generated or received by the National Park Service during the preceding year on measurement of instream flow on a Category 3 or 4 stream.

8. Reporting by the State: Between December 1 and December 31 of each year, the Department shall provide the United States with a report of: (1) changes in use during the preceding year, as defined by state law, of water rights upstream of or within the boundaries of reserved land for which a reserved water right is described in this Compact; (2) new permits issued during the preceding year according to the records of the Department; and (3) any data and documents generated by the Department during the preceding year on the measurement of streamflows, diversions and well use on or tributary to Category 3 or 4 streams.

K. Administration of Little Bighorn Instream Flow

This section governs the administration of instream flow rights of the United States on the Little Bighorn River described in Article III. section E.3., in relation to junior water rights initiated after the effective date of this Compact to which the United States has not subordinated and which are not a part of the Crow Tribal Water Rights. Nothing in these provisions, or in this Compact, regarding administration affects or in any way impairs any ability or authority of the Crow Tribe to administer, regulate or manage any water rights within the boundaries of the Crow Indian Reservation.

1. For purposes of administering the instream flow water right of the United States described in Article III. section E.3. the United States shall establish and maintain a discharge gauge at the LBBNM gauge site. The United States shall keep a record of daily flows for the period from March 1 through June 30 of each year in which the United States seeks curtailment of junior water rights.

2. The United States may seek curtailment to enforce its 950 cfs instream flow water right, described in Article III. section E.3.b., at the LBBNM gauge site any time from May 1 through June 30. The decision to seek curtailment shall be initiated by the NPS and at the NPS's discretion.

a. A decision to seek curtailment to enforce the 950 cfs instream flow water right shall be based on a determination that the flow at the LBBNM gauge site plus claimed or permitted appropriations by non-subordinated junior water users equals 950 cfs or more.

b. Once curtailment is sought and confirmed as set forth in Article II. section K.3, it may last for up to 15 consecutive days, or through June 30, whichever occurs first, provided, however, that the 15 days shall be reduced by subtracting the number of days between March 1st and the date of confirmation of curtailment that the flow at the LBBNM gauge site has equalled or exceeded 950 cfs.

c. Any curtailment based upon the 950 cfs water right shall be limited to direct surface diversions from the Little Bighorn River and its tributaries, and wells completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone, as described in Article II. section B.2.b.v.(3).

3. Notice by NPS that it seeks curtailment to enforce the 950 cfs instream flow water right shall be by either written or verbal notice to the appropriate DNRC office. The NPS shall use its best efforts to maintain contact with the DNRC beginning May 1st of each year to provide advance warning of stream flow conditions.

a. Upon receipt of notice from the NPS that the United States requests curtailment to enforce the 950 cfs instream flow water right, the DNRC shall, within 24 hours, verify actual diversions by non-subordinated junior water users and confirm that the sum of flow at the LBBNM and actual diversions by non-subordinated junior water users equals or exceeds 950 cfs. If the DNRC determines that the actual diversions are insufficient to bring the flow at the LBBNM gauge site to 950 cfs, it shall not proceed with curtailment. If a decision is made not to proceed with curtailment, the DNRC shall notify the NPS the same day. After notification, the

NPS may again seek curtailment beginning the following day if conditions of flow and time of year meet the conditions set forth in Article II. section K.2.

b. If the DNRC proceeds with curtailment to enforce the 950 cfs water right, the DNRC shall, without delay, shut off non-subordinated junior water uses in reverse order of priority to the extent necessary to bring the flow at the LBBNM gauge site to 950 cfs, provided that, DNRC has the discretion to forgo curtailment of a particular water right if it determines that curtailment of that water right to satisfy the 950 cfs instream flow right would be futile.

c. Should flow at the LBBNM gauge site exceed 950 cfs at any time during curtailment, the DNRC may reopen diversions in order of priority until 950 cfs is reached. Should the flow at the LBBNM gauge site drop below 950 cfs at any time during the curtailment, non-subordinated junior water uses shall remain shut off provided that, if the NPS reasonably determines the flow at the LBBNM gauge site is not likely to come back up to 950 cfs during the remainder of the curtailment period, it may consent to end the curtailment.

4. Notice by NPS that it seeks curtailment to enforce the 51 cfs instream flow water right described in Article III. section E.3.a., shall be by either written or verbal notice to the appropriate DNRC office. Upon receipt of notice from the NPS that the United States requests a curtailment to enforce the 51 cfs instream flow water right, the DNRC shall, within 24 hours, verify actual diversions by non-subordinated junior water users. If diversions are being made by non-subordinated junior water users, the DNRC shall, without delay, shut off non-subordinated junior water uses in order of priority to the extent necessary to bring the flow at the LBBNM gauge site to 51 cfs, provided that, DNRC has the discretion to forgo curtailment of a particular water right if it determines that curtailment of that water right to satisfy the 51 cfs instream flow right would be futile.

5. All permits within the Little Bighorn River Basin upstream of the LBBNM gauge site with a priority date after the effective date of this Compact shall be conditioned on the prior right of the NPS for 950 cfs instream flow water right at the LBBNM during May and June, and for the 51 cfs instream flow water right during any portion of the year, and on the authority of DNRC to curtail use to satisfy the instream flow right.

6. All diversions from the Little Bighorn River or its tributaries above LBBNM with a priority date after the effective date of this Compact, shall have the duty to establish and maintain a controllable headgate and an adequate measuring device and shall also be required to maintain a record of daily water diversions, including noting the number of hours for which diversions are made for each day and the flow rate at which water is diverted.

7. DNRC and NPS shall work together to develop a quantitative prediction relationship between the flow at the LBBNM gauge site, diversions by non-subordinated junior water users, and the prediction of curtailment requirements.

8. Either party has the right to petition a court of competent jurisdiction for administration of water rights or for appointment of a water commissioner should cooperative administration not be proceeding as planned or should cooperative administration become burdensome. Any water commissioner shall enforce the curtailment as described in this Compact. Exhaustion of administrative remedies pursuant to this Article is not a prerequisite to any such suit.

ARTICLE III
WATER RIGHT

The parties agree that the following water rights are in settlement of the reserved water rights of the United States for the reservations described. The parties to this agreement recognize that the water rights for these NPS Units [BCNRA and LBBNM] are junior to Crow Tribal Water Rights. All reserved water rights described in this Article are subject to Article V, section A.

A. Big Hole National Battlefield

1. Priority Date

The United States has a priority date of June 29, 1939 for the reserved water rights described in this Compact for BHNB.

2. Consumptive Use

The United States has a reserved water right for current and future consumptive use for the purposes of the BHNB as set forth in Table 1. The period of use shall be from January 1 through

December 31. The source and place of use shall be as set forth more specifically in the Abstract. The place of use or point of diversion of a consumptive use water right at BHNB shall include any non-reserved land within BHNB boundaries as the boundaries exist on the effective date of this Compact.

TABLE 1
United States National Park Service
Big Hole National Battlefield Consumptive Use

Place of Use	Total Volume (ac-ft)	Maximum Flow Rate (gpm)
Visitor center		
Museum		
Maintenance area		
Residences		
Picnic area		
Irrigation		
Total for all use	7.14	50

3. Instream Flow

The North Fork of the Big Hole River is designated a Category 4 stream where it flows over the reserved land of BHNB. The United States has a reserved water right for instream flow on the North Fork of the Big Hole River where it flows over the reserved land of BHNB. The reserved water right for instream flow is quantified and defined as follows:

a. Instream Flow Quantification for November through March: The United States has a reserved water right for instream flow on the North Fork of the Big Hole River at the point the river enters the reserved land of BHNB in the amount of 10 cfs for November through March. The instream flow water right is subordinate to (1) any use recognized under state law with a priority date before January 1, 1993; (2) any use considered non-consumptive as defined by this Compact; and (3) any use of groundwater not included in the calculation of consumptive use pursuant to Article II.

b. Instream Flow Quantification for April through October: The United States has a reserved water right for instream flow on the North Fork of the Big Hole River for April through October in the amount of water left in the river after satisfaction of current and future consumptive uses pursuant to state law in the amounts up to but no greater than provided in Table 2, provided, that the limits of Table 2 notwithstanding, the instream flow water right of the United States is subordinate to (1) any water rights recognized under state law with a priority date before January 1, 1993; (2) any use considered non-consumptive as defined by this Compact; and (3) any use of groundwater not included in the calculation of consumptive use pursuant to Article II.

TABLE 2
State Law Based
Total Current and Future Consumptive Use Rights (cfs)
Tributary to the Reserved Portion of the
North Fork of the Big Hole River

Month	Consumptive Use
April	4.85
May	23.85
June	18.70
July	4.05
Aug.	1.75
Sept.	1.35
Oct.	1.50

4. Nothing in this Compact may affect an existing right to divert water from a point within BHNB and transport it for use off BHNB.

B. Bighorn Canyon National Recreation Area

1. Priority Date: The United States has a priority date of October 15, 1966 for the water rights described in this Compact for Bighorn Canyon National Recreation Area. The United States recognizes that its water rights for the BCNRA are junior in priority to Crow Tribal Water Rights.

2. Consumptive Use: The United States has water rights for current and future consumptive use for the purposes of the Bighorn Canyon National Recreation Area (BCNRA) as set forth in the following Table [3]. The period of use shall be from January 1 through December 31. The source and place of use shall be as set forth more specifically in the Abstract.

TABLE 3
United States National Park Service
Bighorn Canyon National Recreation Area Consumptive Use

Place of Use	Total Volume (ac-ft)	Maximum Flow Rate (gpm)
Fort Smith Visitor center	17.6	110
Ok-A Beh/Marina	6.9	35
Grapevine Creek Overflow Campground	12.5	110
Barry's Landing, Trail Creek, Chain Canyon	29.3	180
Bighorn River Ranch	4.7	35
Layout Creek Ranger Station, Sorenson Ranch	140.4	230
Lockhart Ranch	25.6	110
Hillsboro Site	11.0	230
Stock and Wildlife Watering	3.5	
Total Volume of Use:	251.5 acre-feet	

3. Instream Flow

The United States has water rights for instream flow in the streams which flow over the land of Bighorn Canyon National Recreation Area. These water rights for instream flow are quantified and defined as follows:

a. Category 1a:

i. Identification: The following streams are designated as "Category 1a": North Fork Trail Creek, South Fork Trail Creek, and Trail Creek.

ii. Instream Flow: The United States has a water right for instream flow on the Category 1a streams where they enter the BCNRA in the amount of the entire flow of the streams, less (1) any United States' consumptive use rights described in this Compact and any Crow Tribal Water Rights; and (2) all water rights appurtenant to nonfederal land within the boundaries of BCNRA recognized under state law and having a priority date before the effective date of this Compact.

In the event that all non-federal land on a Category 1a stream is acquired by the United States for the purpose of addition to BCNRA, the stream may be reclassified as a Category 1 stream at the request of the United States.

b. Category 3:

i. Identification: The following streams are designated as "Category 3": Dry Head Creek, Deadman Creek, Davis Creek (aka Medicine Creek), and Layout Creek.

ii. The United States has a water right for instream flow on Category 3 streams in the amount of the entire flow of the streams, less any United States' consumptive use rights described in this Compact, and any Crow Tribal Water Rights, provided that, the instream flow right is subordinate to (1) the sum of all water rights recognized under state law with a priority date before the effective date of this Compact, plus any future consumptive use rights calculated according to Article II of this Compact until the limit on future consumptive use set forth in the Table [4] below is reached; (2) any use considered non-consumptive as defined by this Compact; (3) any use for instream stockwatering or for stockwater or domestic uses by wells or developed springs with an appropriation of 35 gpm or less that does not exceed 10 afy; and (4) any use of groundwater not included in the calculation of consumptive use according to Article II of this Compact.

TABLE 4
State Law Based
Total Future Consumptive Use Rights (cfs)
Tributary to the Reserved Portion of Category 3 Streams

Dry Head	Deadman	Davis	Layout
2.23*	1.59**	0.50	0.11

* Or the amount of net depletions reasonably necessary to irrigate 20 acres, whichever is largest.

** Or the amount of net depletions reasonably necessary to irrigate 35 acres, whichever is largest.

c. Category 4:

i. Identification: The following streams are designated as "Category 4": Pete's Canyon Creek, the tributary of Deadman Creek that issues from Annerer Spring and flows across BCNRA land in the N1/2NW1/4 Sec. 8, T8S, R29E, M.P.M.

(1) The United States has a water right for instream flow on Pete's Canyon Creek in the amount of one-half (1/2) of the naturally occurring flow that originates from Pete's Spring.

(2) The United States has a water right for the tributary of Deadman Creek, in the amount of one (1) gallon per minute.

4. Springs

The United States has a water right for instream flows for the following springs identified by location, in the amount of the entire flow of the springs, less any consumptive use rights of the United States described by this Compact.

Sorenson Spring	Sec. 09, T9S, R28E
Lockhart #1 Spring	Sec. 13, T8S, R28E
Lockhart #2 Spring	Sec. 13, T8S, R28E
Hillsboro Spring	Sec. 36, T8S, R28E

This list of springs may be modified based on field verification of any spring located entirely within the boundaries of the BCNRA that is not the source of a water right recognized under state law. Springs that occur on Crow Reservation lands are excluded from any water rights for springs.

C. Glacier National Park

1. Priority Date

The United States has a priority date of May 11, 1910 for reserved water rights described in this Compact for GNP. The United States recognizes that this date is junior to the priority dates for reserved water rights of the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, and the Blackfeet Tribe of the Blackfeet Indian Reservation.

2. Consumptive Use

The United States has a reserved water right for current and future consumptive use for the purposes of GNP as set forth in Table 5. The period of use shall be from January 1 through December 31. The source and place of use shall be as set forth more specifically in the Abstract. The place of use or point of diversion of a consumptive use water right at GNP shall include any non-reserved land within GNP boundaries as the boundaries exist on the effective date of this Compact.

TABLE 5
United States National Park Service
Glacier National Park Consumptive Use

Place of Use	Total Volume (ac-ft)	Maximum Flow Rate (gpm)
North Fork Flathead River Basin		
Station, campground	4.7	70
Backcountry Use	1.98	
Backcountry Patrol Cabins	2.06	55
Middle Fork Flathead River Basin		
McDonald Creek areas	246.00	1720
Middle Fork areas	0.70	10
Backcountry Use	2.42	
Backcountry Patrol Cabins	2.06	55
Saint Mary River Basin		
Northern Border areas	2.20	20
Many Glacier areas	166.40	600
Saint Mary areas	128.40	915
Backcountry Use	2.02	
Backcountry Patrol Cabins	1.50	40
Two Medicine River Basin		
Two Medicine areas	6.40	70
Backcountry Use	0.38	
Backcountry Patrol Cabins	0.19	5
Cut Bank River Basin		
Backcountry Use	0.18	
Backcountry Patrol Cabins	0.19	
Milk River Basin		
Backcountry Use	0.02	
GNP TOTAL	567.80	

3. Instream Flow Right

a. Category 1:

i. Identification:

The following streams are designated as "Category 1:"

Sage, Spruce, Kishenehn, Starvation, Kintla, Red Medicine Bow, Agassiz, Ford, Parke, Long Bow, Akokala, Numa, Pocket, Jefferson, Bowman, Rainbow, Cummings, Logging, Anaconda, McGee, Camas, Fern, Fish, Howe, Longfellow, Trapper, Continental, Flattop, Kipp, Cattle Queen, Ahern, Mineral, Alder, Haystack, Logan, Hidden, Avalanche, Snyder, Sprague, Walton, Lincoln, Thompson, Pacific, Stimson, Nyack, Peril, Pinchot, Elk, Coal, Muir, Park, Debris, Ole, Shields, Autumn, Upper Bear, Boundary, Olson, South Fork Valentine, Valentine, Kootenai, Pass, Camp, Cleveland, Street, Whitecrow, Redgap, Lee, Otatso, Kennedy, Windy, Appekunny, Ptarmigan, Iceberg, Wilbur, Cataract, Allen, Swiftcurrent, Boulder, Two Dog, Rose, Baring, Siyeh, Reynolds, Virginia, Medicine Owl, Hudson Bay, Red Eagle, Atlantic, North Fork Cut Bank, Lake, Dry Fork, Aster, Paradise, Appistoki, Two Medicine, Fortymile, Fortyone Mile, Midvale, Railroad, Coonsa, Long Knife, Jackson, Grinnell, Kaina, Lunch, Pyramid, Thunderbird and Upper Summit Creeks and Waterton, St. Mary, North Fork Belly, Mokowanis and Belly Rivers.

ii. Instream Flow

The United States has a reserved water right for instream flow on the Category 1 streams in the amount of the entire flow of the streams, less any United States' consumptive use rights described in this Compact. This reserved water right ends at the point the stream exits the reserved land of GNP. The relationship between this water right and a water right to water stored within GNP held by the United States shall be governed by the rule of priority.

b. Category 1a Streams

i. Identification:

The following streams are designated as "Category 1a:"

Apgar, Canyon, Dutch, Harrison, McDonald, and Quartz Creeks.

ii. Instream Flow:

(a) The United States has a reserved water right for instream flow on the Category 1a streams in the amount of the entire flow of the streams, less (1) any United States' consumptive use rights described in this Compact; and (2) all water rights appurtenant to non-federal land within the boundaries of GNP recognized under state law with a priority date before January 1, 1993. This reserved water right ends at the most downstream point that the stream exits the reserved land of GNP.

(b) In the event all non-federal land on a Category 1a stream is acquired by the United States for the purpose of addition to GNP, the stream may be reclassified as a Category 1 stream at the request of the United States.

c. Category 4 Streams

i. Identification:

The following streams are designated as Category 4: the North Fork of the Flathead River, the Middle Fork of the Flathead River, Divide, Jule, Rubideau and Wild Creeks.

ii. Instream Flow for the North and Middle Forks of the Flathead River:

The United States has a reserved water right for instream flow on the North and Middle Forks of the Flathead River in the amount of the entire flow of the rivers, less any United States' consumptive use rights described in this Compact provided that, the instream flow water right is subordinate to 1) all water rights recognized under state law with a priority date before January 1, 1993, 2) future consumptive use rights calculated according to Article II up to the limits set forth in Table 6; (3) any use considered non-consumptive as defined by this Compact; and (4) any use of groundwater not included in the calculation of consumptive use according to Article II. This reserved water right ends at the most downstream point that the River forms the boundary of the reserved land of GNP.

TABLE 6
State Law Based
Future Consumptive Use Rights (cfs)
Tributary to the Reserved Portion of the Flathead River

Month	North Fork Flathead River	Middle Fork Flathead River
Jan.	7.5	7.1
Feb.	7.2	6.9
Mar.	8.9	8.1
April	#	#
May	#	#
June	#	#
July	40.5	#
Aug.	16.2	13.7
Sept.	11.8	9.7
Oct.	11.8	10.6
Nov.	12.0	11.6
Dec.	9.0	9.2

The amount of water available for future consumptive use in these months shall be an amount equivalent to the flow rate for all consumptive uses recognized under state law on December 31, 1992. The amount shall be adjusted to reflect the flow rates in a decree issued by a state or federal court of competent jurisdiction after December 31, 1992. At such time as final decrees are entered in these basins, the Department shall tabulate these rights, insert the

appropriate amounts into Table 6, and submit the revised Table to the United States and the state for inclusion in this Compact. Revision of Table 6 to reflect this agreement shall not be deemed a modification of this Compact.

iii. Instream Flow for Divide, Jule, Rubideau and Wild Creeks

The United States has a reserved water right for instream flow on Divide, Jule, Rubideau, and Wild Creeks in the amount of the entire flow of the stream, less any United States' consumptive use rights described in this Compact. This water right ends at the most downstream point that the stream exits or no longer forms the boundary to the reserved land of GNP. This right is subject to the provisions of Article V, section A., and (1) on Divide Creek, is subordinate to any water rights recognized under state law with a priority date before January 1, 1993; and (2) on Rubideau Creek, is subordinate to any water rights recognized under state law with a priority date before January 1, 1993, provided that the use of such right is consistent with federal law.

4. Lakes

The United States has a reserved water right for the maintenance of natural water levels in all naturally occurring lakes within the boundaries of GNP for the purpose of preserving unimpaired these Park resources. The water right for the maintenance of lake levels is subordinate to (1) any United States' consumptive use rights described in this Compact; and (2) any water right recognized under state law with a priority date before January 1, 1993. The named and unnamed lakes in which the United States has a reserved water right are those set forth specifically in the Abstract.

D. Grant Kohrs Ranch National Historic Site

The Grant Kohrs Ranch National Historic Site in Montana does not include reserved land. The United States may apply for a permit to appropriate water or seek recognition of any existing water rights in accordance with state law.

E. Little Bighorn Battlefield National Monument

1. Priority Date

a. The United States has a priority date of December 7, 1886 for current and future consumptive uses under the water rights reserved for the irrigation, maintenance and administration of the Little Bighorn Battlefield National Monument. The United States recognizes that its water rights for the BCNRA are junior in priority to Crow Tribal Water Rights.

b. The United States has a priority date of March 22, 1946 for the instream flow water rights reserved for use as part of the Little Bighorn Battlefield National Monument, and necessary for historical interpretation of the battle. The United States recognizes that its water rights for the LBBNM are junior in priority to Crow Tribal Water Rights.

2. Consumptive Use

a. The United States has a reserved water right for current and future consumptive uses for the purposes of LBBNM as set forth in Table 7. The period of use shall be from January 1 through December 31. The place of use or point of diversion of a consumptive use water right at LBBNM shall include any non-reserved land within LBBNM boundaries as the boundaries exist on the effective date of this Compact.

TABLE 7
United States National Park Service
Little Bighorn National Battlefield Consumptive Use

Place of Use	Total Volume (ac-ft)	Maximum Flow Rate (gpm)	Source
Cemetery, Visitors Center, Administrative Offices, Residences, Historic Buildings Maintenance Area, and Firehouse Facilities.	84.9	450	groundwater well

3. Instream Flow

The United States has a reserved water right for instream flow on the Little Bighorn River where it forms the boundary of the Little Bighorn Battlefield National Monument as follows:

a. The United States has a reserved water right for minimum instream flow in the amount of 51.0 cfs with a priority of March 22, 1946, for the period January 1 through December 31, provided that, the instream flow water right is subordinate to:

(1) any water rights recognized under the state law with a priority date before the effective date of this Compact;

(2) any instream stockwater use;

(3) any use of groundwater through wells or developed springs with an appropriation of 35 gpm or less that does not exceed 10 afy;

(4) any use considered non-consumptive as defined by this Compact;

(5) any use of groundwater not included in the calculation of consumptive use according to Article II of this Compact.

b. The United States has a reserved water right for instream flow in the amount of 950 cfs, with a priority date of March 22, 1946, for 15 days during the period of May 1st through June 30th, subject to the terms and conditions regarding implementation as set forth in Article II, section K, provided that, the instream flow water right is subordinate to:

(1) any water rights recognized under the state law with a priority date before the effective date of this Compact;

(2) any instream stockwater use;

(3) any use of groundwater from wells completed outside of the Quaternary Alluvium or Quaternary Terrace Deposits of the Little Bighorn River and its tributaries or the Parkman Sandstone;

(4) any use of groundwater from wells or developed springs completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone with an appropriation of 35 gpm or less that does not exceed 10 afy;

(5) any use of groundwater from wells completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone with a permit amount in excess of 35 gpm or 10 afy that is not determined to be hydrologically connected to the Little Bighorn River or its tributaries pursuant to Article II. section B.2.b.v. of this Compact;

(6) any use considered non-consumptive as defined by this Compact.

c. Instream Flow Rights Not Cumulative: The 950 cfs instream flow, when it occurs, is not additive to the 51.0 cfs year-round minimum flow.

F. Nez Perce National Historical Park

The Nez Perce National Historical Park in Montana does not include reserved land. The United States may apply for a permit to appropriate water or seek recognition of any existing water rights in accordance with state law.

G. Yellowstone National Park

1. Priority Date

The United States has a priority date of March 1, 1872 for the reserved water rights described in this Compact for YNP.

2. Consumptive Use

The United States has a reserved water right for current and future consumptive use for the purposes of YNP as set forth in Table 8. The period of use shall be from January 1 through December 31. The source and place of use shall be as set forth more specifically in the Abstract. The place of use or point of diversion of a consumptive use water right at YNP shall include any non-reserved land within YNP as the boundaries exist on the effective date of this Compact.

TABLE 8
United States National Park Service
Yellowstone National Park Consumptive Use

Place of Use	Total Volume (ac-ft)	Maximum Flow Rate (gpm)

Yellowstone River Basin		
North Entrance	1.70	35
Stephens Creek facilities	12.00	50
TW facilities (Gardiner)	58.70	300
NE Entrance	15.60	50
Backcountry Use	10.70	
Backcountry Patrol Cabins	2.00	15
Day Use Areas	2.40	6
Gallatin River Basin		
NW Entrance Area	15.00	50
Backcountry Use	2.80	
Backcountry Patrol Cabins	0.50	10
Day Use Areas	0.60	6
Madison River Basin		
West Entrance	48.90	200
Backcountry Use	2.80	
Backcountry Patrol Cabins	0.50	10
Day Use Areas	0.70	6
YNP TOTAL	174.90	

3. Instream Flow Right

a. Category 1:

i. Identification:

The following streams are designated as "Category 1:"

Black Bear Canyon, Black Butte, Blacktail Deer, Cougar, Daly, Duck, Fan, Grayling, Landslide, Mol Heron, Pebble, Specimen, Stephens, Upper Reese, and Wickiup Creeks, and the Gardner River.

ii. Instream Flow:

The United States has a reserved water right for instream flow on the Category 1 streams in the amount of the entire flow of the streams, less any United States' consumptive use rights described in this Compact. This reserved water right ends at the most downstream point that the stream exits the reserved land of YNP.

b. Category 2:

i. Identification:

The following streams are designated as "Category 2:"

Bacon Rind, Buffalo, Cottonwood, Coyote, Hellroaring, Little Cottonwood, and Snowslide Creeks.

ii. Instream Flow

The United States has a reserved water right for instream flow on the Category 2 streams in the amount of the entire flow of the streams, less any consumptive use rights of an agency of the United States recognized under federal or state law. This reserved water right ends at the most downstream point that the stream exits the reserved land of YNP.

iii. Change in Wilderness Designation

In the event that the Congress of the United States repeals the Wilderness designation assigned to the headwaters of an above named Category 2 stream, then, to the extent consistent with the law repealing the Wilderness designation as it pertains to water use, the stream headwatered in the former Wilderness may be reclassified in the appropriate category on request by the state.

c. Category 3:

i. Identification:

The following streams are designated as "Category 3:"

Crevice, Dry Canyon, Slough, and Tepee Creeks.

ii. The United States has a reserved water right for instream flow on Category 3 streams in the amount of the entire flow of the streams, less any United States' consumptive use rights described in this Compact, provided that, the instream flow right is subordinate to (1) the sum of all water rights recognized under state law with a priority date before January 1, 1993, plus any future consumptive use rights calculated according to Article II, until the limit on total current and future consumptive use set forth in Table 9 is reached; (2) any use considered non-consumptive as defined by this Compact; and (3) any use of groundwater not included in the calculation of consumptive use according to Article II.

TABLE 9
State Law Based
Total Current and Future Consumptive Use Rights (cfs)
Tributary to the Reserved Portion of Category 3 Streams

Month	Crevice Creek	Dry Canyon Creek	Slough Creek	Tepee Creek
Jan.	0.2	0.1	1.5	0.3
Feb.	0.2	0.1	1.6	0.3
Mar.	0.3	0.1	1.9	0.4
April	1.1	0.2	5.6	1.2
May	3.8	1.3	19.8	4.5
June	3.4	1.2	22.4	5.3
July	1.0	0.3	7.3	1.7
Aug.	0.4	0.2	2.9	0.8
Sept.	0.4	0.1	2.3	0.6
Oct.	0.4	0.1	2.4	0.6
Nov.	0.3	0.1	2.1	0.5
Dec.	0.2	0.1	1.8	0.4

iii. The provisions of Article III, section G.3.c.ii notwithstanding, in the event of a period of low flow such that Crevice, Dry Canyon, Slough, or Tepee Creeks fall below the critical levels of instream flow shown in Table 10 at the point the stream enters the reserved land of YNP, the United States' water right for instream flow is not subordinate to consumptive use water rights recognized under state law with a priority date on or after January 1, 1993.

TABLE 10
Low Stream Flow Levels at which Subordination is Limited (cfs)

Month	Crevice Creek	Dry Canyon Creek	Slough Creek	Tepee Creek
Jan.	3.8	1.1	28.9	6.5
Feb.	4.5	1.0	30.6	6.5
Mar.	5.2	1.2	35.4	7.7
April	20.2	4.7	106.4	23.7
May	71.8	24.0	376.2	84.6
June	63.8	22.9	425.6	100.1
July	18.7	6.6	138.7	33.2
Aug.	8.1	3.1	55.2	14.9
Sept.	7.0	2.0	44.2	10.9
Oct.	7.1	1.9	46.0	10.8
Nov.	5.2	1.5	39.5	9.1
Dec.	3.9	1.4	34.1	8.1

d. Category 4:

The following streams are designated as Category 4: Soda Butte Creek within the state, and the Gallatin, Madison and Yellowstone Rivers where they flow within or form the boundary to reserved land of YNP within the state.

i. Soda Butte Creek

(1) The United States has a reserved water right for instream flow on Soda Butte Creek in the amount of the entire flow of the stream, less any United States' consumptive use rights described in this Compact, provided that, the instream flow right is subordinate to: (a) any water rights recognized under state law with a priority date before January 1, 1993; (b) any future consumptive use rights calculated according to Article II, as long as the limit on total current and future consumptive use set forth in Table 11 has not already been reached or exceeded by the rights protected under subsection (1)(a); (c) any use considered non-consumptive as defined by this Compact; and (d) any use of groundwater not included in the calculation of consumptive use according to Article II.

TABLE 11
State Law Based
Total Current and Future Consumptive Use Rights (cfs)
Tributary to the Reserved Portion of Soda Butte Creek

Month	Flow
Jan.	0.3
Feb.	0.3
Mar.	0.2
April	0.1
May	6.2
June	17.5
July	6.4
Aug.	2.4
Sept.	0.8
Oct.	0.7
Nov.	0.5
Dec.	0.3

(2) The provisions of Article III, section G.3.d.i.(1) notwithstanding, in the event of a period of low flow such that Soda Butte Creek falls below the critical levels of instream flow shown in Table 12 at the point the stream enters the reserved land of YNP, the United States' water right for instream flow shall be subordinate only to: (a) any water right for domestic use of 35 gpm or less and to any water right held by an incorporated or unincorporated municipality, recognized under state law with a priority date before January 1, 1993; (b) any use considered non-consumptive as defined by this Compact; and (c) any use of groundwater not included in the calculation of consumptive use according to Article II.

(3) In the event that the Congress of the United States repeals the Wilderness designation assigned to the land over which Republic and Hayden Creeks and two unnamed tributaries to Soda Butte Creek flow in Wyoming, or otherwise makes water from such tributaries available for appropriation in Wyoming, the state may seek modification of Article III, section G.3.d.i.(2). of this Compact as provided in Article VI, section A.2.

TABLE 12
Low Stream Flow Levels at which Subordination is Limited (cfs)
Soda Butte Creek

Month	Flow
Jan.	5.4
Feb.	5.1
Mar.	4.0
April	1.7
May	116.9
June	332.5
July	120.7

Aug.	46.4
Sept.	15.3
Oct.	14.2
Nov.	9.3
Dec.	6.3

ii. The Gallatin, Madison and Yellowstone Rivers

The United States has a water right for instream flow on the Gallatin, Madison and Yellowstone Rivers in the amount of the entire flow of the streams, less any United States' consumptive use rights described in this Compact, provided that, the right is subordinate to: (1) the sum of all water rights recognized under state law with a priority date before January 1, 1993, plus any future consumptive use rights calculated according to Article II, until the limit on total current and future consumptive use rights set forth in Table 13 is reached; (2) any use considered non-consumptive as defined by this Compact; and (3) any use of groundwater not included in the calculation of consumptive use according to Article II.

TABLE 13
State Law Based
Total Current and Future Consumptive Use Rights (cfs)
Tributary to the Reserved Portion of these Rivers

Month	Gallatin River	Madison River	Yellowstone River
Jan.	3.1	19.9	41.2
Feb.	3.1	19.7	40.6
Mar.	3.5	20.0	44.5
April	9.8	24.3	73.7
May	39.3	40.92	84.7
June	48.0	40.2	556.7
July	15.7	24.7	335.0
Aug.	5.8	21.4	156.5
Sept.	4.4	21.1	96.0
Oct.	4.6	21.4	75.0
Nov.	4.2	21.0	58.4
Dec.	3.8	20.4	47.2

4. Hot Springs tributary to Bear Creek and the Yellowstone River

The hot springs that contribute to Bear Creek outside the boundaries of YNP are important to maintenance of biologic values of reserved water in the Yellowstone River downstream from the confluence with Bear Creek. As part of the settlement of the reserved water right for YNP, the state agrees to grant the United States a water right under state law to all of the natural flow of the Bear Creek hot springs located at the mouth of Bear Creek in S1/2 S1/2, sec. 19, T9S, R9E, Montana Principle Meridian. The priority date is the effective date of this Compact.

5. Lakes

The United States has a reserved water right for the maintenance of natural water levels in all naturally occurring lakes within the boundaries of YNP for the purpose of preserving unimpaired these Park resources. The water right for the maintenance of lake levels is subordinate to (1) any United States' consumptive use rights described in this Compact; and (2) any water right recognized under state law with a priority date before January 1, 1993. The named and unnamed lakes in which the United States has a reserved water right are those set forth more specifically in the Abstract.

H. Emergency Fire Suppression

The use of water for emergency fire suppression benefits the public, and is necessary for the purposes of the various Park reservations. The United States, may as part of its reserved water right, divert water for fire suppression at all of the National Park Service Units as needed, and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be deemed an exercise of the United States' reserved water rights for consumptive use or a violation of its reserved water rights for instream flow.

ARTICLE IV
YELLOWSTONE CONTROLLED GROUNDWATER AREA

A. Statement of Intent

Yellowstone National Park was reserved for the express purpose of "preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition." 17 Stat. 32. The parties agree that Congress reserved water necessary to preserve the hydrothermal features within the reserved land of YNP. These reserved water rights have priorities as of the date on which the land was reserved.

The parties understand that knowledge of the interrelationship of hydrothermal features within YNP, the hydrothermal system that supports those features, and groundwater in surrounding areas of Montana will benefit from increased study. The parties agree that the hydrothermal features of YNP are a unique and irreplaceable resource and represent one of the few undisturbed hydrothermal systems in the United States.

This Compact does not recognize a reserved water right to groundwater outside the boundaries of the reserved land of YNP. However, the parties agree that restrictions shall be placed on the development of groundwater adjacent to YNP to the extent necessary to prevent adverse effect on the reserved water right to groundwater within YNP. The parties agree that the goal of establishment and administration of the Yellowstone Controlled Groundwater Area shall be to allow no impact to the hydrothermal system within the reserved land of YNP.

B. Findings

Ratification of this Compact by the Montana legislature constitutes a finding that:

1. unrestricted use of groundwater adjacent to Yellowstone National Park is likely to interfere with the water rights reserved by the United States in 1872, 1929, 1930, and 1932, for the preservation of hydrothermal features within YNP;

2. prevention of adverse effect on the United States' reserved water right to groundwater within the reserved land of YNP is a benefit to the state and to the United States;

3. the public interest and welfare requires that a corrective control be adopted to regulate groundwater development adjacent to YNP; and

4. the cooperative state-federal management and oversight established by this Article is an effective means to achieve protection of the reserved water right to groundwater necessary to preserve the hydrothermal system within the reserved land of YNP.

C. General Provisions

1. Establishment: The Yellowstone Controlled Groundwater Area or "Area" is hereby established and shall be defined and administered according to this Compact.

2. Funding: The United States agrees that it receives substantial benefit from the establishment and administration of the Yellowstone Controlled Groundwater Area, and that the national and international public benefit extends far beyond the boundaries of the state. Thus, the United States agrees that the relatively small population of the state should not bear the entire cost of protection of the United States' reserved water right. To this end, the Department of the Interior agrees, subject to appropriations by Congress, to reimburse the state for the expense of establishment, administration and enforcement of the Yellowstone Controlled Groundwater Area by the Department; to fund the inventory, sampling, reporting and database management by the Bureau; and, except as provided in Article IV, section J.1.c., to fund the administrative costs and the cost of any study or any other necessary activity pursuant to this Article by the Technical Oversight Committee.

3. Implementation Contingent on Funds: Such funding shall be accomplished pursuant to the terms and conditions of a separate agreement which shall incorporate terms and conditions necessary to specify the activities to be funded and appropriate cost and accounting principles consistent with generally applicable guidelines for federal funding in similar circumstances, and consistent with the terms of this Compact, including, but not limited to, the enumeration of state expenses to be reimbursed in Article IV, section C.2. The state is relieved of its obligation to establish, administer, inventory, sample and maintain a database on the Controlled Groundwater Area in the absence of a funding agreement and the provision of the

funds specified therein. If the state is relieved of its obligation to implement all or a portion of this Article, all other terms of this Compact shall remain in effect, including all reserved water rights established herein. Such agreement may be amended, extended, renewed or terminated pursuant to its terms.

4. Interim Measures:

The state agrees that the following interim measures shall apply from the effective date of this Compact until the receipt of funds from the United States or December 31, 1995, whichever occurs first. The United States agrees to reimburse the state for the cost of the interim measures, subject to the appropriation of funds by Congress. The parties agree that, even if funding is not received by December 31, 1995 and interim measures are suspended, the state and the Department of the Interior will continue to recommend federal funding.

a. The Department shall issue the notice required by Article IV, section F.

b. All permits issued within this time period within the Area shall be conditioned on appropriation of water of less than 60°F., measured at the wellhead.

c. The Department shall require that each applicant for a permit or person filing a notice of completion for issuance of a certificate of water right to appropriate groundwater within the Area report the following information on filing of a well log: (1) well location to the quarter-quarter-quarter-quarter section; (2) ground elevation at the wellhead; (3) well depth; (4) water level; (5) flow rate or maximum pump capacity; and (6) water temperature measured at the wellhead.

d. The Department shall not issue a certificate of water right for the appropriation of groundwater with a temperature of 60°F. or more within the Area during this time period. The Department shall order temporary abandonment of any well in the Area for which a conditional permit was issued or notice of completion for issuance of a certificate of water right was filed within this time period that produces groundwater with a temperature of 60°F. or more, measured at the wellhead. Temporary abandonment shall be according to the rules of the Montana Board of Water Well Contractors.

e. Following receipt of funds from the United States, the Department shall notify the applicant that the appropriation is subject to the terms of this Compact and shall proceed according to the procedures set forth in this Article. If funds are not received by December 31, 1995, the Department may remove the order of temporary abandonment and remove the condition on the permit or issue the certificate of water right pursuant to state law. The Department shall continue to require that each applicant for a permit or certificate of water right to appropriate groundwater within the Area report the following information on filing of a well log: (1) well location to the quarter-quarter-quarter-quarter section; (2) ground elevation at the wellhead; (3) well depth; (4) water level; (5) flow rate or maximum pump capacity; and (6) water temperature measured at the wellhead.

5. Additional Studies: In addition to appropriations necessary to implement this Article, the state and the National Park Service agree to recommend federal funding for a baseline study of hydrothermal features in YNP and within the Controlled Groundwater Area, for continued monitoring of these features, and for geologic and geophysical studies including, but not limited to, geologic mapping, and monitoring of microearthquakes and subsidence in and adjacent to YNP. Implementation of this Article is not contingent on such appropriation.

6. Access for Studies: Consistent with the purposes of YNP, the United States agrees to allow reasonable access to and across YNP to the extent necessary to accomplish the data collection authorized by this Article or additional studies recommended pursuant to Article IV, section C.5. In seeking access, the Department or Bureau shall comply with the provisions of Article II, section I.3.

7. Effect of Modification of Area: It is the intent of the parties that the initial boundaries of the Area set forth in Article IV, section D. and Appendix 3, and initial restrictions set forth in Article IV, section E. may be modified pursuant to Article IV, section J., or with respect to a single appropriation pursuant to Article IV, section G.2.c. and shall not be deemed to be a modification of this Compact. Any other modification of this Article shall be considered a modification of this Compact and is subject to the terms of Article VI, section A.2.

8. It is the intention of the Department of the Interior to protect the hydrothermal resources of Yellowstone National Park through the system established by Article IV.

a. The National Park Service agrees, consistent with 43 U.S.C. § 666, that enforcement will not be sought against the holder of a water right recognized under state law with a priority date on or after January 1, 1993, unless the NPS has, in the first instance, sought enforcement through the state under the terms of this Compact.

b. Notwithstanding the preceding subparagraph, if the National Park Service, in its judgment, determines that circumstances warrant, nothing in this Compact prohibits the United States from petitioning a state or federal court of competent jurisdiction for injunctive or declarative relief. Nothing in this Compact shall alter the courts' application of the test for injunctive relief; neither shall the administrative determination by the National Park Service to seek relief in said court be deemed to establish or preclude any determination in such judicial proceedings. Prior to such an administrative determination, the National Park Service agrees that it will provide the State written notice and will identify a time frame during which it will await the State's efforts to address the concern.

c. As to an action against the holder of a right to withdraw groundwater recognized under state law with a priority date before January 1, 1993, the United States agrees that this Compact shall not be used or relied upon as evidence to show that: (1) a reserved water right of the United States exists appurtenant to any land other than the reserved land of YNP; or (2) the priority date associated with any portion of reserved land of YNP is other than the date on which that portion of land was actually reserved.

D. Initial Boundaries of the Yellowstone Controlled Groundwater Area

The initial boundaries of the Yellowstone Controlled Groundwater Area and Subareas are defined to include the area in the State of Montana located within the geographic boundaries shown on Appendix 3. Appendix 3 is hereby incorporated in this Compact by this reference as though set forth here in full.

1. Subarea I:

The initial geographic boundaries of the subarea referred to as Yellowstone Controlled Groundwater Subarea I shall include all of the area in Montana North and West of YNP within the boundary delineated as subarea I on Appendix 3.

2. Subarea II:

The initial geographic boundaries of the subarea referred to as Yellowstone Controlled Groundwater Subarea II shall include all the area in Montana North and West of YNP within the boundary delineated as subarea II on Appendix 3.

E. Initial Restrictions on Groundwater Development within the Yellowstone Controlled Groundwater Area

Until the initial boundaries or restrictions set forth in this Article are modified pursuant to Article IV, section J., the restrictions set forth in this section shall apply to groundwater appropriations within the Area with a priority date on or after January 1, 1993. Such appropriations shall follow the procedural requirements of Article IV, section G.

1. The parties agree that the initial restrictions on development of groundwater and any modification thereof, shall not apply to appropriations with a priority date before January 1, 1993. The sole provisions of this Article applicable to such appropriations shall be those providing for inventory and sampling of current use set forth in Article IV, section H. Groundwater appropriations with a priority date before January 1, 1993 are subject to applicable state law including, but not limited to, issuance of a certificate of water right following final adjudication of existing water rights. Nothing herein waives the right of the United States to seek protection of its reserved water right for protection of the hydrothermal features within the reserved land of YNP from groundwater appropriations with a priority date before January 1, 1993 in a state or federal court of competent jurisdiction, provided that the limitation on use of this Compact in an action by the United States against any such appropriator set forth in Article IV, section C.8.c. shall apply.

2. The Department shall not issue a permit to appropriate groundwater that is hydrothermal discharge water as defined by this Compact unless either: (1) modification occurs pursuant to Article IV, section J. altering pertinent boundaries or restrictions; or (2) an application is approved pursuant to Article IV, section G.2.c. Unless modification occurs pursuant to Article IV, section J., the Department shall not limit an appropriation of groundwater that is not

hydrothermal discharge water unless required to do so by Article II and III of this Compact or any other provision of state law.

F. General Notice of Establishment of the Yellowstone Controlled Groundwater Area

1. Notice: Within 120 days after the effective date of this Compact and within 60 days of any decision by the Department to modify the Area as set forth in Article IV, section J., the Department shall publish a notice of establishment or modification of the Area setting forth:

a. the description by legal subdivisions of all lands included in the controlled groundwater area;

b. the purpose of the controlled groundwater area or modification; and

c. the permit requirements, restrictions, inventory, sampling and monitoring applicable within each subarea.

2. Publication and Service: Such notice shall be published in a newspaper of general circulation in the county or counties in which the Area is located. The Department shall also serve a copy of the notice by mail on each well driller licensed in Montana whose address is within any county in which any part of the Area is located; on each well driller known by the Department to operate in the Area; on the Montana State Bureau of Mines and Geology; on the mayor or chair of the governing body of each county or incorporated municipality located in whole or in part within the Area; and on the United States. The Department may also serve notice on any other person or state or federal agency that the Department believes may be interested in or affected by the proposed designation or modification of the Area. A copy of the notice shall be mailed to each person's last known address according to the records of the Department.

G. Appropriations of Groundwater within the Yellowstone Controlled Groundwater Area With a Priority Date on or After January 1, 1993

1. Appropriation of Groundwater within the Area with a Priority Date on or after January 1, 1993 and before the Effective Date of this Compact:

The initial restrictions on groundwater development set forth in Article IV, section E. apply to appropriations of groundwater with a priority date on or after January 1, 1993 and before the effective date of this Compact provided that the following procedural requirements are met:

a. Within 120 days after the effective date of this Compact or the receipt of adequate funds from Congress, whichever occurs later, the Department shall provide the United States with notice of all groundwater appropriations within the Area that, according to the records of the Department, have a priority date on or after January 1, 1993 and before the effective date of this Compact.

b. Subsequent to the notice provided for in Article IV, section G.1.a. and up to 120 days following mailing of the report on inventory provided in Article IV, section H.1.b.iii., the United States may provide the Department with credible information on any groundwater appropriation within the Area with a priority date on or after January 1, 1993 and before the effective date of this Compact, showing that the appropriation is of water with a temperature of 60°F. or more.

c. If the United States provides the information set forth in Article IV, section G.1.b., the Department shall, within 60 days of receipt of the information, issue an order requiring that the appropriator comply with the applicable restrictions. The order is effective within 60 days of issuance unless the appropriator enters an appearance to contest the order.

d. If the appropriator enters an appearance to contest the order, the Department shall: (1) issue an order staying use of the appropriation pending final decision on the matter by the Department; (2) set a date for a hearing; and (3) proceed pursuant to the provisions for a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4 of the Montana Code Annotated, provided that in such a proceeding the United States has the burden of proving by a preponderance of the evidence that the appropriation is of groundwater of 60°F or more. If the United States meets this burden, the appropriator shall comply with procedures and restrictions set forth in Article IV, section G.2.

2. Appropriations of Groundwater with a Priority Date after the Effective Date of this Compact

a. General Provisions

i. All groundwater appropriations within the Area after the effective date of this Compact are subject to this Article. Applications and registration for a permit for the appropriation of groundwater within the Area after the effective date of this Compact shall include a statement of whether the proposed use requires water with temperature of 60°F. or more. In addition, the Department shall not issue a permit for appropriation of groundwater unless the requirements of Articles II and III are met, if applicable.

ii. A permit issued pursuant to this Article shall provide that:

(1) The permittee shall install a device to meter total volume of water use in compliance with rules promulgated by the Department pursuant to Article IV, section I.5. The Department shall specify the metering method and location of installation. On or before January 15 of each year, the permittee shall report annual use to the Bureau at: Montana Bureau of Mines and Geology, Main Hall, Montana Tech, Butte MT, 59701. Meters shall be made available to the permittee at the Department of Natural Resources and Conservation Regional Water Rights Office at: 111 North Tracy, Bozeman, Montana, 59715. Meters shall be acquired for distribution by the Department of Natural Resources and Conservation Regional Water Rights Office as part of the inventory and sampling program authorized by Article IV, section I.

(2) The Department has the authority to modify or revoke a permit if the provisions listed below are applicable, and all other administrative or judicial enforcement authority provided under Title 85, part 2, of the Montana Code Annotated applies to this part. The Department may exercise its enforcement authority if (1) the appropriator fails to allow access for sampling provided for in Article IV, section H.; (2) the character of the groundwater produced changes such that a restriction applies pursuant to this Article; (3) new restrictions imposed pursuant to Article IV, section J. are applicable; or (4) the appropriator violates any other provision of this part.

(3) A permit to appropriate hydrothermal discharge water may include limits and conditions on appropriation including but not limited to (a) limits on total withdrawal by day, month or year; (b) a requirement to adhere to a system of rotation of use within the Area; and (c) a provision adjusting the total withdrawal from two or more wells in the area used by the same appropriator.

(4) A permit to appropriate hydrothermal discharge water shall include any applicable monitoring requirement recommended by the Working Group Report or recommendations by the TOC superseding that report unless the applicant shows by clear and convincing evidence that such monitoring is inappropriate.

iii. If, subsequent to the effective date of this Compact, modification pursuant to Article IV, section J. removes the restrictions set forth in Article IV, section E., the monitoring recommended by the Working Group Report or as superseded by the TOC shall continue to apply unless the applicant shows by clear and convincing evidence that such monitoring is inappropriate, according to the criteria in the Working Group Report or as superseded by the TOC.

b. Appropriations of Groundwater with a Temperature of less than 60°F

i. Registration and Application

(1) An applicant for an appropriation of groundwater of 35 gpm or less, not to exceed 10 acre-feet per year shall register for a permit by filing a form prescribed by the Department that shall include, but not be limited to, a statement of whether the proposed use requires water with temperature of 60°F. or more, the well location, and intended use and shall comply with the provisions of Article II and III, if applicable. The Department shall provide notice of the registration for a permit to the United States within 30 days of the filing.

(2) An applicant for a permit to appropriate groundwater of greater than 35 gpm or 10 acre-feet per year after the effective date of this Compact, shall comply with existing state law for permits to appropriate water and the limits on groundwater appropriations set forth in Articles II and III, if applicable. The Department may issue an interim permit for the proposed appropriation to an applicant seeking an appropriation for a use that does not require water with a temperature of 60°F. or more if the requirements of this section are met.

ii. Drilling

(1) On filing a proper registration form, an applicant for an appropriation of 35 gpm or less, not to exceed 10 acre-feet per year, with a proposed use that does not require water with a temperature of 60°F. or more may complete the proposed well subject to state law and the terms of this Compact, but shall not put the water to beneficial use until issuance of a permit.

(2) Upon issuance of an interim permit, an applicant for an appropriation of greater than 35 gpm or 10 acre-feet per year may drill the well subject to state law and the terms of this Compact, but shall not put the water to beneficial use until issuance of a permit.

iii. Within 60 days of drilling of the well, the applicant or registrant shall provide the Department with a well log on a form provided by the Department. The well log shall include well location to the quarter-quarter-quarter-quarter section; ground elevation at the wellhead; well depth; water level; flow rate or maximum pump rate; water temperature measured at the wellhead; and specific conductance of the water produced using a device provided by the Water Resources Regional Office.

iv. The Department shall forward a copy of the well log to the United States and to the Bureau on receipt.

v. Following receipt of the well log, the Department may inspect the well at a reasonable hour of the day to verify the information on the well log report. The United States may request to accompany the inspector as set forth in Article II, section I.4.

vi. The United States has 60 days from the mailing of the report to file an objection setting forth credible information that the appropriation is of groundwater with characteristics to which restrictions established pursuant to this Article apply.

vii. The Department may issue a permit to appropriate if: (1) the well log and any verification confirm that the appropriation is of water to which no restrictions pursuant to this Article apply; and (2) all other requirements of state law and this Compact have been met, unless the United States files an objection pursuant to Article IV, section G.2.b.vi. If the well log or verification indicate appropriation of water to which restrictions pursuant to this Article apply or if the United States files a proper objection, the applicant shall be subject to the provisions of Article IV, section G.2.c.

viii. If a permit is issued, the applicant or registrant may complete the appropriation and apply the water to beneficial use.

ix. Within 60 days of completion of the appropriation, the permittee shall file a notice of completion with the Department pursuant to state law.

c. Appropriation of Groundwater with a Temperature of 60°F. or Greater

If an application or registration for a permit within the Area is for a use requiring groundwater with a temperature of 60°F. or more or the well log or any verification indicates water of 60°F. or more, the following provisions apply:

i. Subarea I - groundwater with a temperature of 85°F. or more:

Groundwater of 85°F. or more in Subarea I is presumed to be hydrothermal discharge water. The Department shall not process or grant an application for a permit to appropriate water with a temperature of 85°F. or more in Subarea I, unless the appropriation is consistent with modification of restrictions pursuant to Article IV, section J., or pursuant to the procedures set forth below. An application for an appropriation that proposes to do no more than divert the unenhanced natural surface flow of a spring that is not located in the mainstem of the reserved portion of a stream to which a reserved water right for instream flow is described in Article III of this Compact is not subject to these restrictions.

(1) The application shall set forth credible information that the proposed appropriation does not include contribution by hydrothermal discharge water;

(2) Within 30 days of receipt of the information the Department shall seek review of the application by the TOC.

(3) The TOC shall review the report to determine if the appropriation can take place without adverse effect on the hydrothermal system within YNP. In performing the review, the TOC shall utilize the best available scientific information. The TOC shall resolve doubt in favor of protection of the hydrothermal system within YNP.

(4) Within 60 days of the request by the Department, the TOC shall recommend, in a report to the Department, if, and under what conditions the appropriation could be allowed without adverse effect on the hydrothermal system within YNP. The TOC may recommend limits or conditions on the proposed appropriation that, in the opinion of the TOC, would allow the development while protecting the hydrothermal system within YNP. The TOC shall also provide the Department with a dissenting report pursuant to Article IV, section J.1., if applicable.

(5) On receipt of the report or reports, the Department shall provide a copy to the United States and the applicant and shall schedule a hearing no less than 60 and no more than 90 days from mailing of the report.

(6) The hearing shall proceed as a contested case under the Montana Administrative Procedure Act, Title 2, Chapter 4 of the Montana Code Annotated.

(7) The report or reports, data and other written information produced by the TOC shall be admissible in the hearing without further foundation and not subject to the hearsay objection, subject to the rights of any party or claimant to cross-examine the producer or drafter of the written material and to controvert the same by other evidence. The hearing officer may request that members of the TOC appear to provide expert testimony in the case.

(8) The report and recommendations provided by the TOC have a rebuttable presumption of validity for the purposes of Article IV. The dissenting report, if any, may be used as rebuttal evidence.

(9) If the report recommends denial of the application, the applicant may overcome the presumption by proving by clear and convincing evidence that the proposed appropriation does not include hydrothermal discharge water.

(10) If the application is denied, the Department shall order that the well be temporarily abandoned; or, if multiple water zones are encountered, the zone of excess temperature be closed to production. Abandonment shall be according to the rules of the Montana Board of Water Well Contractors unless alternative procedures are recommended by the TOC. The abandonment order shall not be lifted until a modification order pursuant to Section IV.J. allows the appropriation or until the department determines that the well should be permanently abandoned.

(11) Within 30 days of an order by the Department pursuant to this section, appeal on the record may be made to a state or federal court of competent jurisdiction. For an appeal to state court, venue shall be the First Judicial District in Helena and the review must be conducted according to the procedures for judicial review of a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated.

ii. Subarea I - groundwater with a temperature of 60°F. or more, but less than 85°F:

Appropriation of groundwater with a temperature of 60°F. or more, but less than 85°F. in subarea I is subject to the following provisions.

(1) The applicant shall provide credible information that the water meets the following criteria:

(a) the proposed appropriation will do no more than divert the unenhanced natural surface flow of a spring that is not located in the mainstem of the reserved portion of a stream to which a reserved water right for instream flow is described in Article III of this Compact, or

(b) the proposed appropriation meets all of the following criteria:

(i) The water temperature is the result of the normal thermal gradient of the earth plus the mean annual air temperature at the site plus 14°F. Unless modified by the TOC, the Department shall use the following equation to estimate the water temperature expected:

(0.01646 x the depth of the production zone in feet) + 59.3°F.

If the temperature measured at the wellhead is equal to or less than the temperature estimated by this equation, the appropriation meets this criteria.

(ii) the concentration of soluble chloride is less than ten parts per million; and

(iii) the well does not contain a production zone completed within the Madison Group of formations as defined by the Catalog of Stratigraphic Names for Montana, Bureau of Mines and Geology, Special Publication 54, March 1971.

(2) The Department may issue a permit to appropriate groundwater with a temperature of 60°F or more, but less than 85°F. to an applicant that meets the above criteria and is in compliance with the provisions of Article IV, section G.2.c. unless (a) restrictions are consistent with modification pursuant to Article IV, section J.; or (b) the United States objects and shows by a preponderance of the evidence that the criteria have not been met or, for another scientific reason, the temperature is the result of contribution by hydrothermal discharge water.

(3) If the applicant fails to meet the above criteria or the United States meets its burden, the applicant shall comply with the provisions of Article IV, section G.2.c.i. for water or 85°F or more.

(4) The three criteria set forth in Article IV, section G.2.c.ii.(1)(b) may be modified on recommendation by the TOC.

iii. Subarea II:

(1) Groundwater of 85°F. or more in subarea II is presumed to be hydrothermal discharge water. The applicant shall follow the procedures of Article IV, section G.2.c.i. including review by the TOC, provided that, if a permit to appropriate is issued the monitoring recommended in the Working Group Report or as superseded by the TOC for subarea II, not subarea I, shall apply.

(2) An applicant who encounters groundwater of 60°F. or more but less than 85°F. shall comply with the provisions of Article IV, section G.2.c.ii., provided that, if a permit to appropriate is issued the monitoring recommended in the Working Group Report or as superseded by the TOC for subarea II, not subarea I, shall apply.

3. Change in Character of Groundwater: Within 60 days of the receipt of information indicating a change in the character of the groundwater appropriated under a permit issued in the Area on or after January 1, 1993 that indicates the production of groundwater for which a restriction applies, the Department shall issue an order requiring that the appropriator comply with the limitations on appropriation of hydrothermal groundwater authorized in this Article. The order shall take affect 60 days following the date issued unless the appropriator appears to contest the order. If the appropriator appears to contest the order, the Department shall set a date for a hearing and proceed pursuant to the provisions for a contested case under the Montana Administrative Procedures Act, title 2, Chapter 4, of the Montana Code Annotated, provided that the appropriator shall have the burden to prove by a preponderance of the evidence that the water produced does not meet the criteria to which restrictions apply.

H. Inventory and Sampling of Groundwater

1. Initial Inventory

All groundwater appropriations in the Area with a priority date before the effective date of this Compact shall be inventoried as set forth below:

a. Notice of Inventory

Within 120 days after the effective date of this Compact or the receipt of funding from the United States, whichever occurs later, the Department shall serve notice by mail on each person or public agency known from an examination of the records in the Department's office to be an appropriator of groundwater with a priority date before the effective date of this Compact. The notice shall set forth:

i. the contents of the notice required in Article IV, section F.; and

ii. a statement that within 3 years from the date of notice the Bureau may visit the wellsite to measure temperature; flow rate or maximum pump capacity; water level, or pump level if the well cannot be entered; and may collect a water sample for additional analysis.

b. Inventory

i. Within 3 years of notice pursuant to Article IV, section H.1.a., a representative of the Bureau shall inventory each well drilled pursuant to an appropriation recognized under state law with a priority date before the effective date of this Compact. The inventory shall be considered complete when the Bureau has inventoried substantially all of the wells that can be located and accessed with reasonable diligence. The inventory shall include, but not be limited to, the following:

(1) well location to the quarter-quarter-quarter-quarter section;

(2) ground elevation at the wellhead;

(3) flow rate or maximum pump capacity;

(4) water level, or pump level if the well cannot be entered;

(5) water temperature at the wellhead;

(6) specific conductance of the water at the wellhead;

(7) chloride content of the water at the wellhead;

(8) water samples from a representative number of wells selected by the Bureau. The water samples shall be analyzed by the Bureau, or by a qualified lab contracted by the Bureau. Samples shall be analyzed for chemistry, and, if applicable, gas and isotopes. Choice of analyses shall be at the discretion of the Bureau using the Working Group Report or a report by the TOC

superseding the Working Group Report as a guideline. The Bureau may consult with the TOC concerning well selection and analysis; and,

(9) any additional information deemed necessary for implementation of this Article by the Bureau in consultation with the TOC.

ii. The inventory shall be prioritized to complete Subarea I first.

iii. Within 6 months of completion of the inventory in each Subarea, the Bureau shall provide a report to the Department, the TOC, and the United States, verifying that the inventory is complete and setting forth the data obtained in the inventory. The report shall be made available to the public by the Department. In addition, the Bureau shall maintain an adequate database pursuant to Article IV, section H.2.

2. Sampling Program and Database

a. Following the initial inventory of all current groundwater appropriations in the Area provided for in Article VI, section H.1., the Bureau shall sample wells selected in consultation with the TOC and at a frequency determined in consultation with the TOC. The wells may include appropriations made prior to, on or after January 1, 1993. The number of wells sampled and the analyses performed shall be as determined by the Bureau in consultation with the TOC. Until superseded due to recommendation by the TOC, the Working Group Report shall be used as a guideline in making this determination. Within 6 months of the completion of each inventory and sampling program, the Bureau shall provide the Department, the TOC and the United States with a report on the results.

b. The Bureau shall maintain an adequate database on the Yellowstone Controlled Groundwater Area which shall include, at a minimum, analyses of water chemistry, temperature, well depth, well capacity and well location.

c. The United States agrees to provide an annual report to the Bureau for incorporation into the database on the water chemistry, temperature and flow rate of any well in use or spring sampled in the portion of YNP within the state, and may include such information for any well or spring in the portion of YNP outside the state.

d. The information in the database shall be available to the public through the Natural Resources Information System, currently located at 1515 E. Sixth Avenue, Helena, Montana 59620-1800.

I. Administration of the Yellowstone Controlled Groundwater Area

1. The Yellowstone Controlled Groundwater Area established by this Compact shall be administered pursuant to applicable state law and the terms of this Compact.

2. In addition to the requirements imposed by state law, the Department shall provide the United States with notice of any application or registration for a permit to appropriate groundwater within the Area in the same manner and time as required by state law for notice to groundwater appropriators in a controlled groundwater area.

3. The United States may be an objector to any application or registration for a permit to appropriate groundwater or in a hearing for modification of a permit to appropriate groundwater within the Area pursuant to the provisions of Article IV, section G.

4. The Department shall, whenever possible, consolidate any proceedings on groundwater applications or registration pursuant to Articles II and III with any proceeding made necessary by this Article.

5. Within 2 years after the effective date of this Compact or the receipt of the requested funding from the United States, whichever occurs later, the Department is directed to promulgate such additional rules necessary to effectuate this Compact and to establish criteria which may be necessary to implement this Article. Said rules shall not alter the rights or obligations of the parties hereto. In doing so, the Department shall consult with the United States and the TOC. Until modified by the TOC, the Department shall adopt the Working Group Report to govern sampling, reporting and monitoring requirements, except as modified by Article IV, section G. In reviewing any permit to appropriate hydrothermal discharge water the Department shall consider the criteria set forth in the Working Group Report or a subsequent report by the TOC, including, but not limited to, the identification of risk associated with volume of appropriation and distance from the reserved land of YNP.

J. Modification of the Yellowstone Controlled Groundwater Area

1. Technical Oversight Committee: Establishment and Authority

a. A joint federal-state Technical Oversight Committee is hereby established to review scientific evidence related to the Yellowstone Controlled Groundwater Area; to advise the Department on administration of the Area, including review of applications to appropriate water of 60°F. or more; to consult with the Bureau on inventory and sampling; and to recommend modification of boundaries and restrictions.

b. The committee shall consist of five qualified scientists with experience related to hydrothermal systems. The committee members shall be appointed within six months following the effective date of this Compact: one appointed by the National Park Service; one appointed by the United States Geological Survey; one appointed by the Department; one appointed from the Montana University system by the Montana State Geologist; and one selected by the other four members. Appointments and selections shall be made, to the extent possible, to ensure that three of the qualified scientists with experience related to hydrothermal systems also have experience in (1) geochemistry; (2) geophysics; and (3) hydrogeology. Vacancies due to expiration of terms or resignation of a member shall be filled in the same manner. Should the four members fail to agree on the selection of additional members within 60 days after appointment of all four members or within 30 days after a vacancy occurs, the following procedure shall be utilized:

(i) Within 5 days each member shall nominate one person for each vacancy and submit the nominations to a judge of the First Judicial District in Helena; and

(ii) A judge of the First Judicial District in Helena shall fill the vacancy by selecting a member from each set of nominations.

c. Each member shall serve a five-year term and shall be eligible for reappointment. Expenses of the members shall be born by the entity appointing the member. The per diem or salary, and travel expenses of the three members-at-large shall be born equally by the United States and the state, subject to the availability of funds. All other expenses of the TOC shall be born by the United States subject to Congressional appropriation as set forth in Article IV, section C.

d. The recommendation of any of the following by the TOC shall be based on a supermajority of four to one: (1) modification of the Area pursuant to Article IV, section J; (2) review of an application to appropriate groundwater with a temperature of 60°F. or more; and (3) removal of any of the criteria specified in Article IV, section G.[2.]c.ii.(1)(b). Failure to achieve a supermajority shall result in a recommendation of no modification or no permit approval. In the absence of a unanimous decision, the TOC shall provide both a report supporting the recommendation that there be no modification or no permit approval, and a dissenting report to the Department. In all other instances in which the TOC consults with or makes recommendations to the Department or the Bureau, recommendations shall be made by a simple majority of the entire committee.

e. The TOC shall:

i. review the boundaries of the Area and the Subareas;

ii. review the initial restrictions on groundwater development imposed pursuant to this Article, and future modifications of those restrictions;

iii. assess the cumulative impact of all development in the Area;

iv. review changes in the groundwater and hydrothermal systems revealed by inventory and analyses done by the Bureau, and any other pertinent scientific evidence;

v. review new scientific evidence pertinent to the Area;

vi. consult with the Bureau or the Department on request;

vii. present evidence and make recommendations to the Department in accordance with Article IV, section J.2.

viii. review applications for a permit to appropriate groundwater on request by the Department as set forth in Article IV, section G.2.c.; and

ix. take any additional action necessary to implement this Article.

f. The Department and the Bureau shall provide the TOC with all information in their records regarding appropriations of groundwater within the Area including reports required by this Article.

g. The initial review shall take place within 1 year of the receipt of the inventory report done by the Bureau pursuant to Article IV, section H. Subsequent reviews shall take place every

5 years following the initial inventory or following the issuance of 75 permits to appropriate water within the Area by the Department, whichever occurs first. Additional review shall also take place on request by the United States or the state.

h. Within 6 months of initiation of a review, the TOC shall provide a report of the review, including any recommendation for modification, and a dissenting report, if any, to the Department and the United States. Recommendations shall be based on a determination by a supermajority of the entire TOC that the modification is necessary to prevent adverse effect to the hydrothermal system within the reserved land of YNP, or that modification may be made without the threat of adverse effect on the hydrothermal system within the reserved land of YNP. The recommendation shall be made in good faith and based on scientific evidence including, but not limited to, the following:

i. in the case of extension of boundaries, the criteria set out in the Working Group Report for designation of the boundary of the Area to be enlarged is found to exist within the proposed extension;

ii. the cumulative effect of groundwater development within the Area or a portion of the Area has resulted in declining hydraulic head and modification of boundaries or restrictions are necessary to prevent adverse effect on the hydrothermal system within the reserved land of YNP;

iii. changes in groundwater revealed by the inventory and sampling program are such that modification is necessary to prevent adverse effect on the hydrothermal system within the reserved land of YNP;

iv. scientific evidence indicates that modification is necessary to prevent adverse effect on the hydrothermal system within the reserved land of YNP;

v. based on scientific evidence, restrictions can be removed or boundary modifications made without the threat of adverse effect to the hydrothermal system within the reserved land of YNP.

2. Modification Pursuant to Review

a. Within 60 days of mailing of the report in Article IV, section J.1.h., and if (1) the TOC recommends modification; (2) the United States, state or a person with property or water rights within the Area petitions for a hearing; or (3) a person with an interest that would be adversely affected by the recommendation, petitions for a hearing, the Department shall provide for notice of a hearing pursuant to state law.

b. The Department shall follow the rules for a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4 of the Montana Code Annotated. In addition, the Department shall apply the following provisions:

i. The report or reports, data and other written information produced by the TOC shall be admissible in the hearing without further foundation and not subject to the hearsay objection, subject to the rights of any party or claimant to cross-examine the producer or drafter of the written material and to controvert the same by other evidence. The hearing officer may request that members of the TOC appear to provide expert testimony in the case. The hearing officer shall also hear any oral and written scientific evidence presented by the state, the United States, any applicant for a permit to appropriate who has requested review, and any person with property or water rights in the Area, or an interest that would be adversely affected by the recommended modification.

ii. The scientific evidence and recommendations presented in the report by the TOC have a rebuttable presumption of validity for the purposes of Article IV. The Department shall adopt the recommendations of the TOC unless the recommendation by the TOC is refuted by clear and convincing scientific evidence. The dissenting report of the TOC, if any, may be used as rebuttal evidence.

iii. The Department shall issue an order stating findings of fact and conclusions of law.

c. Within 30 days of an order by the Department, a person aggrieved by the order may appeal on the record to a state or federal court of competent jurisdiction. For an appeal to state court, venue shall be the First Judicial District in Helena and the review must be conducted according to the procedures for judicial review of a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated.

ARTICLE V
GENERAL PROVISIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights:

1. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water [with respect to BHNB, GNP, and YNP or] the nature or extent of the rights to water or the right to administer water [with respect to BCNRA and LBBNM] of an Indian Tribe in Montana, or of a water right of an individual that is derivative of such right, or of the United States on behalf of such tribe or tribal member. The relationship between the water rights of the National Park Service described herein and any rights to water of an Indian Tribe in Montana, or of a water right of an individual that is derivative of such right, or of the United States on behalf of such tribe or tribal member shall be determined by the rule of priority. The United States specifically recognizes the seniority of the Crow Tribal Water Rights.

2. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of an Indian Tribe regarding boundaries or property interests in the State of Montana.

3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the National Park Service. The exercise of a water right of the United States, if any, to water for a consumptive use on land administered by the United States Forest Service upstream of a water right to instream flow described in this Compact shall be allocated from the United States' share for instream flow, not the state's share for consumptive use.

B. State Water Rights

Nothing in this Compact may limit the exclusive authority of the state, including the authority of a water commissioner authorized by state law, to administer all current and future water rights recognized under state law within and upstream of the reserved land covered by this Compact, provided that in administration of those water rights in which the United States has an interest, such authority is limited to that granted under federal law.

C. General Disclaimers

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation or the interpretation or administration of future compacts between the United States and the state; or of the United States and any other state;

2. as a waiver by the United States of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;

4. to establish a precedent for other agreements between the state and the United States or an Indian tribe;

5. to determine the relative rights, inter sese, of persons using water under the authority of state law or to limit the rights of the parties or a person to litigate an issue not resolved by this Compact;

6. to create or deny substantive rights through headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the effective date of this Compact;

8. to affect the right of the state to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or Act of Congress;

9. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with regard to the water rights of the National Park Service, and does not affect the water rights of any other federal agency.

10. to alter or amend any provisions of the Yellowstone River Compact, Act of October 30, 1951, ch. 629, 65 Stat. 663 (1951).

D. Use of Water Right

Except as otherwise provided in this Compact, the rights of the United States described in this agreement are federal reserved water rights. Non-use of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment of the right. The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the associated reserved land.

E. Appropriation Pursuant to State Law

Nothing in this Compact may prevent the United States from seeking a permit to appropriate water under state law for use outside the boundaries of the federal reservations for which a water right is described in this Compact, provided that, no such use may be included in the calculation of total current or future consumptive use rights allocated to use pursuant to state law by this Compact, and provided further that, a water right obtained in this manner shall be considered a state water right and shall be administered pursuant to general provisions of state law as provided in Article II, section J.2.b.

F. Reservation of Rights

The parties expressly reserve all rights not granted, described or relinquished in this Compact.

G. Severability

Except as provided in Article IV, the provisions of this Compact are not severable, provided that for the purposes of Sec. 85-2-702(3) MCA, the water rights described in this Compact for the LBBNM and BCNRA Units shall be considered as separate Compacts.

H. Multiple Originals

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

I. Notice

Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as he or she may designate in writing.

2. United States: Upon the Secretary of the Interior and such other officials as he or she may designate in writing.

ARTICLE VI
FINALITY OF COMPACT AND DISMISSAL OF PENDING CASES

A. Binding Effect

1. The effective date of this Compact is the date of the ratification of this Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on:

a. The state and a person or entity of any nature whatsoever using, claiming or in any manner asserting a right under the authority of the state to the use of water; and

b. except as otherwise provided in Article V, section A., the United States, a person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.

2. Following the effective date, this Compact shall not be modified without the consent of both parties. Either party may seek enforcement of this Compact in a court of competent jurisdiction. Except as provided in Article IV concerning the appropriation of funds, attempt to unilaterally modify this Compact by either party shall render this Compact voidable at the election of the other party.

3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all persons bound by the final order of the court.

4. If an objection to this Compact is sustained pursuant to 85-2-702(3), MCA, this Compact shall be voidable by action of and without prejudice to either party.

B. Disposition of Actions

Subject to the following stipulations and within one hundred eighty (180) days of the effective date, the parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. §666, for approval in accordance with state law and for the incorporation of the reserved water rights described in this Compact into a decree or decrees entered therein. The parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the limited waiver or sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. §666 or other provision of federal law.

1. Dismissal of Filed Claims: At the time the state courts approve the reserved water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all of the water right claims specified in Appendix 4 to this Compact. If this Compact fails approval or a reserved water right described herein is not confirmed, the specified claims shall not be dismissed.

2. Disposition of Federal Suits: Within ninety (90) days of the issuance of a final decree or decrees by the state courts approving this Compact and confirming the reserved water rights described herein, and the completion of any direct appeals therefrom or the expiration of the time for filing such appeal, the parties shall execute and file joint motions pursuant to Rule 41(a) Fed. R. Civ. P. to dismiss with prejudice those claims made by the United States for Glacier National Park in United States v. Aageson, No. CV-79-21-GF (D. Mont.); United States v. Abell, No. CV-79-33M (D. Mont.); and United States v. AMS Ranch, Inc., No. CV-79-22-GF (D. Mont.) and any claims made by the United States for LBBNM or BCNRA in federal court. This Compact may be filed as a consent decree in those federal suits, only if, prior to the dismissal of the federal suits as provided in this Article, it is finally determined in a judgement binding on the State of Montana that the state courts lack jurisdiction over some or all of the reserved water rights described in this Compact. Within one year of such judgment the United States agrees to commence such additional proceedings in the federal district court for the District of Montana as may be necessary to judicially confirm the reserved water rights described herein which are not included within an existing action.

C. Settlement of Claims

The parties intend that, with the exceptions noted herein, the water rights described in this Compact are in full and final settlement of the water right claims for the reserved land administered by the National Park Service in Montana on the effective date of this Compact. Pursuant to this settlement, by which certain federal reserved water rights are expressly recognized by the state in this Compact and other water rights claims of the United States are expressly retained in Article III, sections D. and F. in the Compact for YNP, GNP, and BHNM, the United States hereby and in full settlement of any and all claims filed by the United States or which could have been filed by the United States for reserved land administered by the National Park Service in Montana relinquishes forever all said claims on the effective date of this Compact to water within the State of Montana for reserved land administered by the National Park Service. The state agrees to recognize the reserved water rights described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the state.

Specifically excepted from this final settlement of water rights are water rights Claims No. 43P-W-162354-00 and 43P-W-162348-00, both of which are claimed in the general adjudication of water rights as state law based water rights. Claim No. 43P-W-162354-00 is for 0.75 cfs from the Big Horn Canal for irrigation purposes at the Bighorn River Ranch site within BCNRA. Claim No. 43P-W-162348-00 is for 50 gpm from Pete's Spring for recreation and wildlife purposes and is located outside of the BCNRA boundary.

D. The parties agree to seek enactment of legislation and to recommend appropriation of federal funds necessary to effectuate the provisions and purposes of this Compact, and to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the 30th day of May, 1995.

FOR THE STATE OF MONTANA
MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION
FOR THE UNITED STATES

History: **En. Sec. 1, Ch. 635, L. 1993; Sec. 85-2-706, MCA 1993; redes. 85-20-401 by Code Commissioner, 1994; amd. Sec. 1, Ch. 149, L. 1995.**

85-20-402. Accounting for federal funds. (1) There must be created those accounts that are necessary within the federal special revenue fund established under 17-2-102 for the purposes of this part.

(2) Federal funds deposited in the accounts and interest and earnings on the accounts must be used for the following purposes or to reimburse the state for expenditures incurred for the following purposes:

(a) establishment, administration, and enforcement of the Yellowstone controlled ground water area;

(b) inventory, sampling, reporting, and database management;

(c) provision for administrative costs and the cost of any study or any other necessary activity by the technical oversight committee; and

(d) any other necessary activity pursuant to this part.

History: En. Sec. 2, Ch. 635, L. 1993; Sec. 85-2-707, MCA 1993; redes. 85-20-402 by Code Commissioner, 1994; amd. Sec. 30, Ch. 389, L. 1999.

Part 5
United States Bureau of Land Management-Montana Compact

85-20-501. United States Bureau of Land Management-Montana compact ratified. The compact entered into by the state of Montana and the United States Bureau of Land Management and filed with the secretary of state of the state of Montana under the provisions of 85-2-702 on March 28, 1997, is ratified. The compact is as follows:

WATER RIGHTS COMPACT
STATE OF MONTANA
UNITED STATES OF AMERICA, BUREAU OF LAND MANAGEMENT

This Compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims to water for certain lands administered by the Bureau of Land Management within the State of Montana at the time of the effective date of this Compact.

RECITALS

WHEREAS, the State of Montana, in 1979 pursuant to Title 85, chapter 2 of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, 85-2-228, MCA, provides that a federal reserved water right with a priority date of July 1, 1973, or later be subject to the same process and adjudication as a federal reserved water right with a priority date before July 1, 1973;

WHEREAS, 85-2-703 and 85-2-228(3), MCA, provide that the state may negotiate settlement of claims by the federal government to non-Indian reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of two Bureau of Land Management units in the State of Montana, specifically those reserved water rights necessary to preserve the Upper Missouri National Wild and Scenic River and the Bear Trap Canyon Public Recreation Site;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§516-17 (1968);

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of Interior pursuant to 43 U.S.C. §1457 (1986, Supp. 1992);

NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE I
DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

(1) "Annual Report" means the report prepared by the Montana Department of Natural Resources and Conservation providing information concerning water appropriations issued,

modified, revoked, or abandoned in that year that affects the quantity of water in the Available Water Supply, and the current status of the Available Water Supply.

(2) "Available Water Supply" or "AWS" means those monthly amounts of surface and groundwater available to meet the state's projected demands, as identified in Table 1, in the Missouri River basin upstream from the point the Missouri River leaves the boundary of the Upper Missouri National Wild & Scenic River beyond that necessary to satisfy the United States' reserved water right. All depletions from appropriations completed after December 31, 1987, shall be subtracted from the Available Water Supply.

(3) "Bear Trap Canyon Public Recreation Site" or "BTCPRS" means those lands located in Montana that, pursuant to authority granted by Executive Order No. 10355 of May 26, 1952, were withdrawn and reserved by Secretary of the Interior Public Land Order 5062 (Montana 17093), published in the Federal Register on June 9, 1971.

(4) "BLM" means the United States Bureau of Land Management or its successor.

(5) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

(6) "Depletion" means, for water uses subtracted from the Available Water Supply, the amount of water reduced in the source of supply for each month as calculated in accordance with the Method for Calculation of Monthly Depletions. A depletion is a standard reduction amount based on depletion factors for the type of use as opposed to a measured deduction or a term, condition, restriction, or limitation on an appropriation.

(7) "Groundwater" means any water that is beneath the ground surface.

(8) "HYDROSS Model" means the United States Bureau of Reclamation's Hydrologic Operations Study (HYDROSS) model for the Missouri River basin upstream from the point that the Missouri River leaves the boundary of the Upper Missouri National Wild & Scenic River. The HYDROSS Model is a water supply model that uses monthly water supply studies derived from a period of flow records to simulate the effect of existing and proposed water demands on the historic naturalized flow of the Missouri River. The HYDROSS model and information used to develop the model are archived in the Montana state library.

(9) "Instream flow" means the water that the parties agree shall remain in the stream in satisfaction of the United States' reserved water right for the purposes of the federal reservation.

(10) "Method for Calculation of Monthly Depletions" means the procedure the Department will follow in calculating depletions subtracted from the Available Water Supply for appropriations completed after December 31, 1987. The Method for Calculation of Monthly Depletions is incorporated in this Compact and attached as Appendix 1.

(11) "Non-Consumptive Use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(12) "Parties" means the State of Montana and the United States.

(13) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, "state" means the Director of the Montana Department of Natural Resources and Conservation or the Director's designee.

(14) "Supplemental Water" means a new appropriation issued for the same purpose of use and place of use already covered by a valid appropriation, with the same (or reduced) period of use, flow rate and, if applicable, volume of water. To be considered supplemental, no aspect of the new appropriation may exceed that of the original valid appropriation and only one appropriation or part of each may be used at the same time.

(15) "Upper Missouri National Wild & Scenic River" or "UMNW&SR" means the segment of the Missouri River located in Montana that, pursuant to the Wild and Scenic Rivers Act, 16 U.S.C. 1271, et seq, (1986, Supp. 1992), was designated as a component of the National Wild and Scenic Rivers System by Public Law 94-486, Title II, 90 Stat. 2327-2329, on October 12, 1976.

(16) "United States" means the federal government and all officers, agencies, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of the Interior or the Secretary's designee.

ARTICLE II
WATER RIGHT

The parties agree that the following water rights are in settlement of the reserved water rights of the United States for the reservations described. The parties to this Compact recognize that the water rights described in this Compact are junior to any Tribal water rights with a priority date before the effective date of this Compact, including aboriginal rights, if any, in the basins affected. All reserved water rights described in this Article are subject to Article V, section A.

A. Instream Flow for the Upper Missouri National Wild and Scenic River.

1. Priority Date: The United States has a priority date of October 12, 1976, for the water right described in this Compact for the UMNW&SR.

2. Instream Flow: The United States has a water right for instream flow in the Missouri River from Fort Benton one hundred and forty-nine miles downstream to Fred Robinson Bridge, as specifically depicted on the map attached as Appendix 2. The water right is in the amount of the remaining flow of the river after (1) all water appropriations completed before December 31, 1987; (2) the volumes of water designated for the Available Water Supply as provided in Article III, section A; and (3) uses not subtracted from the Available Water Supply as provided in Article III, section C.

B. Instream Flow for the Bear Trap Canyon Public Recreation Site.

1. Priority Date: The United States has a priority date of June 9, 1971, for the water right described in this Compact for the BTCPRS.

2. Instream Flow: The United States has a water right for instream flow in the Madison River which flows over the reserved land of Bear Trap Canyon Public Recreation Site, more specifically described as T4S R1E Sec. 20 SW1/4 downstream to T3S R1E Sec. 15 NE1/4. The water right is in the amount of 1,100 cubic feet per second from January 1 through December 31.

ARTICLE III
UMNW&SR WATER RIGHT IMPLEMENTATION

A. Available Water Supply.

The HYDROSS model incorporates information on water uses completed on or before December 31, 1987. The Department will calculate depletions from appropriations completed after December 31, 1987, on a monthly basis in accordance with Article III, section B and subtract such depletions from the water volumes designated for the Available Water Supply as set forth in Table 1.

TABLE 1
AVAILABLE WATER SUPPLY
MONTHLY AMOUNTS

Month	Acre-feet
January	104,000
February	121,000
March	124,000
April	185,000
May	219,000
June	62,000
July	82,000
August	66,000
September	40,000
October	35,000
November	57,000
December	98,000

B. Method for Calculation of Monthly Depletions Subtracted from the Available Water Supply.

1. Surface Water. Except as provided in Article III, section C, the Department will calculate depletions from surface water based on monthly depletion factors for various types of water use in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1 in the month that the use occurs. The Department will subtract monthly depletions from the AWS monthly amounts.

2. Groundwater. Except as provided in Article III, section C, the Department will calculate depletions from groundwater based on monthly depletion factors for various types of water use in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1 and spread the depletions in equal increments throughout the year with 1/12th of the annual depletion volume subtracted from each AWS monthly amount.

3. Stored Water. Except as provided in Article III, section C, the Department will calculate depletions from stored water based on monthly depletion factors for various types of water use for the months of use in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1, but subtract such depletions from the AWS in the months when diverted as calculated in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1. The Department will calculate evaporation depletions in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1 and subtract such depletions from the AWS monthly amounts.

4. Water Reservations. Except as provided in Article III, section C, the Department will calculate depletions from state water reservations granted pursuant to 85-2-316 but not completed on or before December 31, 1987, based on the monthly depletion factors for various types of water use in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1 and subtract such depletions from the AWS monthly amounts, except that the Department will not subtract depletions from Water Reservation No. 72579-41T from the AWS monthly amounts. The Department will process state water reservations subtracted from the AWS monthly amounts that are abandoned, revoked, modified, or found invalid pursuant to Article III, section D.

C. Uses Not Subtracted from the Available Water Supply.

1. Non-Consumptive Use. The Department will not subtract non-consumptive uses from the AWS monthly amounts.

2. Uses of 35 gallons per minute or less, not to exceed 10 acre feet per year. The Department will not subtract groundwater uses of 35 gallons per minute or less, not to exceed 10 acre feet per year, and surface water appropriations of 35 gallons per minute or less, not to exceed 10 acre feet per year for domestic use from the AWS monthly amounts.

3. Supplemental Water. The Department will not subtract supplemental water uses from the AWS monthly amounts.

4. Lawn and Garden. The Department will not subtract depletions for appropriations to irrigate an area 5 acres or less from the AWS monthly amounts.

5. Instream Stock Uses. The Department will not subtract instream stock uses from the AWS monthly amounts.

6. Late Claims. The Department will not subtract valid late claims as defined by 85-2-221, MCA (1995) from the AWS monthly amounts.

7. Federal and Tribal Water Rights. The Department will not subtract water rights created under federal law, water rights recognized in satisfaction of water rights created under federal law, and water rights owned by individuals that are derived from water rights created under federal law from the AWS monthly amounts.

D. Additions to the Available Water Supply.

1. Abandonment. When an appropriation right on a stream affected by this Compact is abandoned after December 31, 1987, and such abandonment causes water to become available for appropriation, the Department will calculate the previous depletion amount in accordance with the Method for Calculation of Monthly Depletions and add such amount to the water volumes designated for the Available Water Supply. State law governs the issue of whether an abandonment has occurred.

2. Modified, Revoked, or Invalid Appropriations. When an appropriation right on a stream affected by this Compact is modified, revoked, or found invalid and such modification, revocation, or invalidation causes water to become available for appropriation, the Department will calculate the previous depletion amount in accordance with the Method for Calculation of Monthly Depletions and add such amount to the water volumes designated for the Available Water Supply.

E. Basin Closure. Except for the uses provided for in Article III, section C, in the Missouri River basin upstream from the point that the Missouri River leaves the boundary of the UMNW&SR the Department shall not process or grant an application for an appropriation in any month in which the water volume designated for the Available Water Supply has been exhausted.

F. Prohibition on Future Mainstem Impoundment. No new impoundments may be permitted on the mainstem of the Missouri River upstream from the UMNW&SR. Reclamation, repair, or rehabilitation of an existing impoundment shall not be considered a new impoundment, provided that, without the consent of the United States, which for nonfederal power generating impoundments under the Federal Energy Regulatory Commission's jurisdiction shall be obtained through the Federal Energy Regulatory Commission, reclamation, repair, or rehabilitation shall not cause the impoundment to exceed the original constructed capacity of the impoundment.

G. Administration and Reporting by the State.

1. Department Administration. The Department will administer the AWS by subtracting depletions from the monthly available water amounts following the procedures set forth in the Method for Calculation of Monthly Depletions attached as Appendix 1. In order to monitor the water volumes in the AWS, the Department will calculate preliminary monthly depletions and subtract the amounts from the AWS. The Department will make final subtractions from the AWS when the Department determines that an appropriation is complete pursuant to 85-2-315 or 85-2-316(8)(b), MCA.

2. Annual Report. The Department will produce an Annual Report by March 1st of each year detailing its actions in administering the AWS for the previous calendar year, provided that the first Annual Report after ratification of this Compact shall include information concerning water appropriations issued, completed, modified, revoked, found invalid, or abandoned since January 1, 1988, through the previous calendar year. The Annual Report is final on April 15 of the year issued unless on or before that date the BLM submits written comments or a request for an annual meeting to the Department. If an annual meeting is requested, it shall be held within thirty days of the request. The Department will make a final decision and issue a final Annual Report by June 1, unless the Department and the BLM agree to a different date.

3. Cooperative Review Process. The Department and the BLM will create a cooperative review process to allow discussion of depletion factors and depletion amounts assigned to the undefined uses as listed in the Method for Calculation of Monthly Depletions attached as Appendix 1 and any other issues concerning the Annual Report. Subject to Article III, section H(1), the Department will make the final decision concerning the administration of the AWS. The Department and the BLM will develop a Memorandum of Understanding describing the cooperative review process within six months of the ratification of this Compact.

4. Changes to the Method for Calculation of Monthly Depletions. The parties may make changes to the Method for Calculation of Monthly Depletions attached as Appendix 1 by written agreement and such changes shall not be deemed a modification of this Compact.

H. Action for Enforcement of Provisions of Article III.

The United States may file an action in a court of competent jurisdiction to enforce the provisions of Article III as follows:

1. Enforcement of Administration of Available Water Supply. After the Annual Report becomes final in accordance with Article III, section G(2), the United States shall have 90 days to file an action for enforcement of the provisions of Article III, section G of this Compact concerning the administration of the AWS. Any action challenging the administration of the AWS may consist only of trial de novo of the Department's actions for the previous calendar year. The United States may not challenge the Department's actions concerning administration of the AWS contained in previous Annual Reports. Except for appropriations issued in violation of Article III, section E, any court order concerning this subsection shall be limited to calculating

depletion amounts from the AWS and does not affect the appropriations issued, revoked, modified, or abandoned or any other decision of the Department.

2. Enforcement of Other Provisions of Article III. The United States may file an action for enforcement of any provision of Article III except Article III, section G at any time.

3. No Standing to Object. The United States does not have standing to object to an application for an appropriation or change in appropriation right, or to participate in a revocation or modification proceeding, based on the property, water right, or interests of the United States for the UMNW&SR, provided that, for an appropriation applied for with a point of diversion or means of conveyance within the boundaries of the UMNW&SR, the Department shall not grant the appropriation unless the Department expressly conditions the appropriation on obtaining the necessary authorization for entry and use from the United States, and provided further that nothing in this Compact shall limit the United States' standing to object based on any other water rights of the United States or the reserved water right for the BTCPRS.

4. Exclusive Remedy. The remedy set forth in this section is the exclusive remedy for enforcement of Article III of this Compact. The United States shall not have to exhaust any administrative remedies in order to enforce Article III of this Compact.

ARTICLE IV
BTCPRS WATER RIGHT IMPLEMENTATION

A. Subject to Prior Uses. The United States' federal reserved water right for instream flow for the segment of the Madison River which flows over the reserved land of Bear Trap Canyon Public Recreation Site is subject to all water rights with a priority date before June 9, 1971 recognized under state or federal law. Nothing in this Compact may affect an existing right to divert water from a point within the BTCPRS and transport it for use outside the BTCPRS.

B. Change in Instream Flow Right. The federal reserved water right for instream flow as described in Article II, section B, shall not be changed to any other use.

C. Notice of Reopening of Madison River Basin. The Department shall notify the BLM if an application for a state water reservation pursuant to 85-2-316, MCA, may be processed and granted within the Madison River basin, as such basin is defined by 85-2-340(4).

D. Enforcement of Water Right. The United States may file an action in a court of competent jurisdiction to enforce the federal reserved water right described in Article II, section B.

E. Venue for Appeal of Administrative Decisions. For any appeal of an administrative decision, venue shall be the First Judicial District in Helena and the review shall be conducted according to the procedures for judicial review of contested cases under the Montana Administrative Procedures Act, Title 2, chapter 4, of the Montana Code Annotated.

ARTICLE V
GENERAL PROVISIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights.

1. The relationship between the water rights of the Bureau of Land Management described herein and any rights to water of an Indian Tribe in Montana, or of any federally derived water right of an individual, or of the United States on behalf of such Tribe or individual shall be determined by the rule of priority.

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any Indian Tribes and Tribal members in Montana.

3. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of an Indian Tribe regarding boundaries or property interests in the State of Montana.

4. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the Bureau of Land Management for the UMNW&SR and the BTCPRS.

B. General Disclaimers.

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the state; or of the United States and any other state;

2. as a waiver by the United States of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact, or, except as provided in this Compact, any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;

4. to establish a precedent for other agreements between the state and the United States or an Indian tribe;

5. to determine the relative rights, inter sese, of persons using water under the authority of state law or to limit the rights of the parties or a person to litigate an issue not resolved by this Compact;

6. to create or deny substantive rights through headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the effective date of this Compact;

8. to affect the right of the state to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or Act of Congress;

9. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with regard to the water rights of the BLM, and does not affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact.

C. Use of Water Right.

The rights of the United States described in Article II of this Compact are federal reserved water rights. Non-use of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment of the right. The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes outlined in applicable federal law.

D. Concurrent with other Non-consumptive Water Uses.

The federal reserved water right for instream flows for the UMNW&SR and the BTCPRS recognized by this Compact shall run concurrently with any other non-consumptive water uses including but not limited to all hydropower uses and other instream flow uses.

E. Appropriation Pursuant to State Law.

Nothing in this Compact may prevent the United States from seeking a water appropriation pursuant to state law for use on the reserved land within the UMNW&SR or the BTCPRS or for use outside the boundaries of the federal reservations for which a water right is described in this Compact, provided that a water right obtained in this manner shall be considered a state water right and shall be administered pursuant to state law.

F. Reservation of Rights.

The parties expressly reserve all rights not granted, described, or relinquished in this Compact.

G. Severability.

The provisions of this Compact are not severable, provided that for the purposes of 85-2-702(3), MCA, the water rights described in this Compact for the Upper Missouri National Wild and Scenic River and Bear Trap Canyon Public Recreation Site shall be considered as separate Compacts.

H. Multiple Originals.

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

I. Notice.

Unless otherwise specifically provided for in this Compact, service of notice, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as the Director may designate in writing.

2. United States: Upon the Secretary of the Interior and such other officials as the Secretary may designate in writing.

ARTICLE VI
FINALITY OF COMPACT

A. Binding Effect.

1. The effective date of this Compact is the date of the ratification of this Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on:

a. the state and a person or entity of any nature whatsoever using, claiming or in any manner asserting a right under the authority of the state to the use of water; and

b. except as otherwise provided in Article V, section A, the United States, a person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.

2. Following the effective date, this Compact shall not be modified without the consent of both parties. Any attempt to unilaterally modify this Compact by either party shall render this Compact voidable at the election of the other party.

B. Settlement of Claims.

The parties intend that the water rights described in this Compact are in full and final settlement of the reserved water right claims for the UMNW&SR and the BTCPRS. Pursuant to this settlement, by which certain federal reserved water rights are expressly recognized by the state in this Compact, the United States hereby and in full settlement of any and all claims filed by the United States or which could have been filed by the United States for the UMNW&SR and the BTCPRS relinquishes forever all said claims on the effective date of this Compact to water within the State of Montana for reserved water rights for the above mentioned units. The state agrees to recognize the reserved water rights described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as any other appropriation.

C. The parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the 10th day of September, 1997.

Appendix 1
Method for Calculation of Monthly Depletions

A. Surface Water.

Depletion factors are grouped by the use codes now employed by the Department, and the monthly depletion factors for each type of water use are set forth below.

1. Fishery, Wildlife, Recreational, and Wildlife/Waterfowl Uses:

FS Fishery
FW Fish and Wildlife
RC Recreation
WW Wildlife/Waterfowl.

The water loss resulting from fishery, wildlife, recreational, and wildlife/waterfowl uses occurs as evaporation from small ponds. The following table lists the monthly depletion factors for evaporative loss in feet per surface acre:

Monthly Depletion Factors for Evaporation

January	0.00
February	0.00
March	0.00
April	0.08
May	0.17
June	0.26
July	0.50

August	0.51
September	0.35
October	0.26
November	0.04
December	0.00

The Department will calculate monthly depletions from evaporation by multiplying the above factors by maximum reservoir surface area (acres).

2. Geothermal and Power Generation Uses:

GE Geothermal
PG Power Generation.

The Department will determine depletions from geothermal and power generation uses on a case-by-case basis.

3. Domestic, Multiple Domestic, and Municipal Uses:

DM Domestic
MD Multiple Domestic
MC Municipal.

The Department will calculate monthly depletions from domestic uses over 35 gallons per minute, exceeding 10 acre feet per year, multi-family domestic, and municipal uses by multiplying the annual volume by the monthly depletion factors set forth below.

Monthly Depletion Factors for Domestic, Multiple Domestic, and Municipal Uses

January	.0135
February	.0135
March	.0270
April	.0315
May	.0450
June	.0585
July	.0810
August	.0675
September	.0495
October	.0360
November	.0135
December	.0135

4. Irrigation including Lawn and Garden over 5 Acres:

IR Irrigation
LG Lawn and Garden.

The Department will calculate monthly depletions from irrigation uses (in acre feet) by multiplying the number of acres by the depletion factors set forth below.

Monthly Depletion Factors for Irrigation Uses

Month	Monthly Depletion Factor (feet per acre)
January	0.0
February	0.0
March	0.0
April	0.0
May	0.2604
June	0.4656
July	0.7417
August	0.5885
September	0.1177

October	0.0
November	0.0
December	0.0

The Department will calculate monthly depletions from lawn and garden uses to irrigate an area greater than 5 acres using the method for irrigation set forth above.

5. Stock Uses:

ST Stock.

The Department will calculate monthly depletions from stock ponds using the monthly depletion factors for evaporation listed in Appendix 1, section A(1).

6. Commercial, Industrial, Institutional, Mining, and Other Uses:

CM Commercial
IN Industrial
IS Institutional
MN Mining.
OP Other Purpose

The Department will assign monthly depletions from commercial, industrial, institutional, mining, and other undefined uses as 50% of the annual volume spread in equal increments throughout the period of use. The Department will make any necessary changes to the assigned monthly depletions to reflect actual depletions when the appropriation is complete. The Department and the BLM may discuss the monthly depletions at the annual meeting and the Department will make the final monthly depletion determination.

7. Transbasin Diversions: The Department will calculate monthly depletions for transbasin diversions outside the drainage area of the Missouri River and its tributaries upstream from the point that the Missouri River leaves the boundary of the Upper Missouri National Wild & Scenic River at 100% of the diverted amount.

B. Groundwater.

The Department will subtract all groundwater uses over 35 gallons per minute, exceeding 10 acre feet per year, from the AWS monthly amounts regardless of location or source aquifer. The Department will calculate depletions from groundwater uses based on monthly depletion factors for the type of water use as listed in Appendix 1, section A and spread the depletions in equal increments throughout the year with 1/12th of the annual depletion volume subtracted from each AWS monthly amount.

C. Stored Water.

The Department will calculate depletions from storage projects by determining the annual depletion based on the monthly depletion factors for the type of use for which the water is stored as listed in Appendix 1, section A and subtract such depletion from the AWS monthly amounts as set forth in the schedule below. For purposes of subtracting the annual depletion for the type of use from the AWS monthly amounts, the Department will apply the following depletion schedule to all reservoirs unless the appropriation issued specifies a different fill regimen.

Monthly Storage Depletion Schedule

Month	% of Calculated Annual Depletion
November	7%
December	8%
January	7%
February	7%
March	10%
April	21%
May	38%
June	2%
Total	100%

The Department will also subtract the monthly depletions from evaporation based on the monthly depletion factors for evaporation listed in Appendix 1, section A(1).

History: En. Sec. 1, Ch. 170, L. 1997.

Part 6
Chippewa Cree Tribe-Montana Compact

85-20-601. Chippewa Cree Tribe-Montana compact ratified. The compact entered into by the State of Montana and the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation and filed with the Secretary of State of the State of Montana under the provisions of 85-2-702 on April 15, 1997, is ratified. The compact is as follows:

WATER RIGHTS COMPACT
STATE OF MONTANA
CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION
UNITED STATES OF AMERICA

This Compact is entered into by and among the State of Montana, the Chippewa Cree Tribe of the Rocky Boy's Reservation, and the United States of America for the purpose of settling any and all existing water rights claims of the Chippewa Cree Tribe in the State of Montana.

ARTICLE I - RECITALS

WHEREAS, in 1979, the United States, on behalf of the Chippewa Cree Tribe of the Rocky Boy's Reservation, brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribe's water rights claims, see, United States v. Aageson, No. CIV-79-21-GF (filed April 5, 1979); and

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America in trust for the Tribe; see, "the McCarran Amendment", 43 U.S.C. 666 (1952); Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983); and

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes Chippewa Cree tribal water rights; and

WHEREAS, the United States has filed claims on behalf of the Chippewa Cree Tribe in the general stream adjudication initiated by the State of Montana; and

WHEREAS, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negotiate settlement of water rights claims filed by Indian tribes or on their behalf by the United States claiming reserved waters within the State of Montana; and

WHEREAS, the federal district court litigation was stayed in 1983 pending the outcome of Montana State court water adjudication proceedings, see, 721 F.2d 1189; and

WHEREAS, the adjudication of Chippewa Cree tribal water rights in the state court proceedings has been suspended while negotiations are proceeding to conclude a compact resolving all water rights claims of the Chippewa Cree Tribe within the State of Montana; and

WHEREAS, the Chippewa Cree Business Committee, or its duly designated representatives, have authority to negotiate this Compact pursuant to 1(a), of Article VI of the Tribal Constitution; and

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. Sections 516-17 (1993); and

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. Section 1457 (1986), inter alia; and

WHEREAS, the Chippewa Cree Tribe, the State of Montana, and the United States agree that the Tribal Water Right described in this Compact shall be in satisfaction of the Tribe's water rights claims within the State of Montana; and

WHEREAS, it is in the best interest of all parties that the water rights claims of the Chippewa Cree Tribe be settled through agreement between and among the Tribe, the State of Montana, and the United States;

NOW THEREFORE, the parties agree to enter into this Compact for the purpose of settling the water rights claims of the Chippewa Cree Tribe within the State of Montana.

ARTICLE II - DEFINITIONS

The following definitions shall apply for purposes of this Compact:

1. "Acre-foot" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43560 cubic feet.

2. "Adverse effect" means an interference with the reasonable exercise of a water right.

3. "Acre feet per year" or "AFY" means the quantity of water to which the Tribe has a right each year measured in acre feet over a period of a year.

4. "Ancestral Missouri River Channel Aquifer" means that material deposited by the Missouri River prior to Pleistocene glaciation, and glacial deposits underlying post-glacial alluvial deposits in the River valley that are sufficiently permeable to conduct groundwater and to yield water to wells. This aquifer is located in the valley of Big Sandy Creek at a depth of 150 feet or more beneath the surface of the ground as shown in Appendix 11 and described in USGS Water Supply Paper 1460-B, Swenson, Frank, "Geology and Ground-Water Resources of the Lower Marias Irrigation Project Montana," (1957).

5. "Beaver Creek Drainage" means Beaver Creek and its tributaries from its headwaters to the confluence with the Milk River, as shown in Appendices 5 and 6.

6. "Big Sandy Creek Basin" means the mainstem of Big Sandy Creek and its tributaries (exclusive of Sage Creek and Lonesome Lake) in Water Court Basin 40H from the headwaters to the confluence with the Milk River, as shown in Appendices 5 and 6.

7. "Board" means the Chippewa Cree - Montana Compact Board established by Section D. of Article IV of this Compact.

8. "Bonneau Reservoir" means the water impoundment as shown in Appendix 6, including the existing storage capacity and the proposed expanded storage capacity, and for which a water right is described in Article III of this Compact.

9. "Box Elder Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Box Elder Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

10. "Brown's Reservoir" means the proposed water impoundment as shown in Appendix 6, including the existing storage capacity and the proposed expanded storage capacity, and for which a water right is described in Article III of this Compact.

11. "Bypass" means the designated streamflow around or through a diversion.

12. "Camp Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Camp Creek from its headwaters to its confluence with Duck Creek, as shown in Appendix 6.

13. "Change in use" means a change in the point of diversion, the place of use, the purpose of use, or the place or means of storage.

14. "Consumptive use" means use of water other than a "non-consumptive use" as defined in this Article.

15. "Continuously store" or "continuous storage" means the right to fill and then continually refill the active storage capacity of an impoundment from the natural flow of the source on which the impoundment is located.

16. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.

17. "Drainage Stipulation" means an agreement entered into between and among the Tribe, the United States acting in its capacity as trustee for the Tribe, and one or more signatory non-tribal water users for entry as a stipulation in Montana Water Court. Drainage stipulations are set forth in Appendix 2.

18. "Drainage of Origin" means the drainage in which the water initially arises. See Appendix 6 showing drainage area boundaries.

19. "Duck Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Duck Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

20. "East Fork Reservoir" means the proposed water impoundment as shown in Appendix 6, including the existing storage capacity and the proposed expanded storage capacity, and for which a water right is described in Article III of this Compact.

21. "Evaporative Loss" means reduction in the quantity of water due to the process of evaporation and shall be three (3) acre feet per surface acre rounded off as set forth in Article III.

22. "Fish and Wildlife Enhancement" means the use of water to improve existing habitat for fish and wildlife use, protection, conservation or management through physical or operational modifications of impoundments, within the areas designated in Appendix 4.

23. "Gorman Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Gorman Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

24. "Gravel Coulee Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Gravel Coulee from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

25. "Groundwater" means any water that is beneath the ground surface.

26. "Hydrologically Connected" means the interconnection of groundwater and surface water such that they constitute one water supply and use of either results in an impact to both.

27. "Lake Elwell" means the water impounded on the Marias River by Tiber Dam.

28. "Lonesome Lake Coulee" means the mainstem of Lonesome Lake Coulee and its tributaries in Water Court Basin 40H from its headwaters to its confluence with Big Sandy Creek, as shown in Appendices 5 & 6.

29. "Lower Big Sandy Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Big Sandy Creek below its confluence with Box Elder Creek as shown in Appendix 6.

30. "Minimum Pool" means the quantity of water in an impoundment, as measured in acre-feet, or by the water surface elevation in feet above sea level, that is not available for release for designated water uses.

31. "MR&I Water" means water for use for municipal, rural, industrial, domestic, and incidental drought relief purposes on the Reservation.

32. "Municipal/Domestic Uses" means water for domestic, public, commercial and industrial uses.

33. "Net Depletion" means the difference between the quantity of water diverted from a source and the quantity of water returned to the same source at or near the point of diversion.

34. "New reserved water rights" means any reserved water rights created with acquisition of land by the Tribe or the United States to be held in trust by the United States for the Tribe, after the date of ratification of this Compact by the State and the Tribe, whichever is later.

35. "Non-consumptive use" means a use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream or groundwater conditions.

36. "Non-Irrigation Water Uses" means the use of water for purposes other than the production of agricultural commodities, such as, but not limited to domestic, livestock, fish and wildlife, and recreational uses, including development of golf courses.

37. "Parties" means the Tribe, the State of Montana, and the United States.

38. "Person" means an individual or any other entity, public or private, including the State, the Tribe and the government of the United States and all officers, agents, and departments thereof.

39. "Ratification date" means the date on which the Compact is finally approved by the Business Committee of the Chippewa Cree Tribe, by the Montana Legislature, and by the Congress of the United States, whichever date is latest.

40. "Recognized under state law" when referring to a water right means a water right arising under state law, but does not include water rights arising under federal law.

41. "Release" means (verb) to discharge water from storage, or (noun) the discharge of water from storage.

42. "Reservation" means the Rocky Boy's Reservation and includes all lands and interests in lands which are held in trust by the United States for the Chippewa Cree Tribe, including future additions to the Reservation.

43. "Sage Creek" means the main stem of Sage Creek and its tributaries in Water Court Basin 40G from the headwaters to the confluence with Big Sandy Creek, as shown in Appendices 5 and 6.

44. "Secretary" means the Secretary of the United States Department of the Interior, or his or her duly authorized representative.

45. "Shallow Alluvium Aquifer" means the material deposited by flowing water generally during, or after Pleistocene glaciation that is sufficiently permeable to conduct groundwater and to yield water to wells and springs.

46. "State" means the state of Montana and all officers, agents, departments, and political subdivisions thereof.

47. "Stockwatering" means the storage and use of water for the purpose of providing water to domesticated animals and wildlife.

48. "Stoneman Farms" means the tribal agricultural projects shown in Appendix 6.

49. "Stoneman Reservoir" means the water impoundment, as shown in Appendix 6, including the existing storage capacity and the proposed expanded storage capacity, and for which a water right is described in Article III of this Compact.

50. "Subordinate" means to rank the priority in which a water right is fulfilled behind other specified water rights without regard to relative priority dates.

51. "Supplemental Irrigation Water" means water used for irrigation, as a secondary supply, once it becomes apparent that the primary supply will be unable to meet the full annual demand.

52. "Surface Acres" means the horizontal area in acres associated with the water surface in an impoundment when filled to the maximum capacity.

53. "Transfer" means (verb) to authorize a person to use all or any part of the Tribal Water Right through a service contract, lease, or other similar agreement of limited duration; (noun) a service contract, lease, or other similar agreement of limited duration authorizing the use of all or any part of the Tribal Water Right.

54. "Tribal Water Resources Department" or "TWRD" means the Chippewa Cree Tribal Water Resources Department, or any successor agency.

55. "Tribal Water Right" means the right of the Chippewa Cree Tribe of the Rocky Boy's Reservation to divert, use, or store water as described by Article III of this Compact.

56. "Tribe" means the Chippewa Cree Tribe of the Rocky Boy's Reservation and all officers, agents and departments thereof.

57. "United States" means the federal government and all officers, agencies, departments, and political subdivisions thereof.

58. "Upper Big Sandy Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Big Sandy Creek from its headwaters to its confluence with Box Elder Creek, as shown in Appendix 6.

59. "Volcanic Bedrock Aquifer" means those Tertiary igneous rock units that are sufficiently permeable to conduct groundwater and to yield water to wells and springs as shown in USGS Miscellaneous Geologic Investigations Map I-234, "Preliminary General Geologic Map of the Laredo Quadrangle, Bearpaw Mountains, Montana," and Map I-235, "Preliminary Geologic Map of the Centennial Mountain Quadrangle, Bearpaw Mountains, Montana," and shown as surface outcrop in Appendix 11.

ARTICLE III - TRIBAL WATER RIGHT

A. Basin 40H: Big Sandy Creek Basin.

1. Gravel Coulee/Lower Big Sandy Creek Drainages - 1690 AFY diversion - 1000 AF continuous storage.

a. Quantification - Source - Volume.

(1) Storage. The Tribe shall have the right to continuously store or permit the continuous storage of up to a capacity of 1000 AF of water in Stoneman Dam and Reservoir from the natural flow of Gravel Coulee. Subject to the 1000 AF limit on storage capacity, the Tribe shall have the additional right to divert up to 1480 AFY from the direct flow of Lower Big Sandy Creek and up to 445 AFY from groundwater for storage in Stoneman Dam and Reservoir as set forth in Section A.1.a.(2) of Article III. The quantity impounded by continuous storage shall not decrease the 1480 AFY which the Tribe may divert for the purposes allowed in Section A.1.e. of Article III. In addition to the storage right set forth in this section, the Tribe shall have the right to

store water for stockwatering and fish and wildlife purposes, as set forth in Sections A.1.e.(3) and (4) of Article III.

(2) Diversion. The Tribe shall have the right to divert or use or permit the diversion or use of 1690 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 1690 AFY:

(a) Direct Flow. The Tribe shall have the right to divert or use or permit the diversion or use of up to 1690 AFY from the direct flow of Gravel Coulee and Lower Big Sandy Creek and its tributaries. 1480 AFY of the water from direct flow may be diverted to storage prior to application to any purposes allowed in Section A.1.e. of Article III without reducing the amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.

(b) Storage. Of the 1690 AFY, the Tribe shall have the right to divert 1480 AFY from storage in Stoneman Reservoir for irrigation and non-irrigation purposes as more specifically provided in Sections A.1.e.(1) and (2) of Article III; provided that, the right to divert 1480 AFY from Lower Big Sandy Creek to storage is not reduced by the amount of water diverted for irrigation or non-irrigation purposes from water derived from storage.

(c) Groundwater. Of the 1690 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 445 AFY of groundwater in the Gravel Coulee and Lower Big Sandy Creek drainages in compliance with Sections A.6.a. and b. of Article IV. Groundwater may be diverted to storage prior to application to any purposes allowed in Section A.1.e. of Article III without reducing the amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.

(i) Of the 445 AFY, 100 AFY may be appropriated from the shallow alluvium along Gravel Coulee and Lower Big Sandy Creek.

(ii) Of the 445 AFY, 345 AFY may be appropriated from the Ancestral Missouri River Channel Aquifer in the Gravel Coulee and Lower Big Sandy Creek drainages. Groundwater from the Ancestral Missouri River Channel Aquifer is a primary source for non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.

b. Priority Date. The water rights to surface flow, groundwater, and storage as set forth in Section A.1. of Article III, for the Gravel Coulee and Lower Big Sandy drainages shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

c. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means on Lower Big Sandy Creek and Gravel Coulee drainages on the Reservation.

e. Purposes. The Tribe's right to 1690 AFY from the Gravel Coulee and Lower Big Sandy drainages may be used for the following purposes; provided that, subject to the limitations set forth in Article IV, the Tribe may make a change in use or transfer of the water identified for irrigation and non-irrigation purposes.

(1) Irrigation.

(a) Volume. 1380 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used for irrigation.

(b) Source. The 1380 AFY for irrigation may come from a combination of direct flow, storage and groundwater in the Gravel Coulee and Lower Big Sandy drainages.

(c) Place of use. The 1380 AFY may be used to irrigate 540 acres at Stoneman Farms on the Reservation.

(2) Non-Irrigation.

(a) Volume. 100 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used for non-irrigation purposes.

(b) Source. The 100 AFY for non-irrigation purposes may come from a combination of direct flow, storage, and groundwater in the Gravel Coulee and Lower Big Sandy drainages.

(c) Point of diversion. The 100 AFY for non-irrigation purposes may be diverted on the Reservation within the Lower Big Sandy and Gravel Coulee drainages.

(3) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Gravel Coulee and Lower Big Sandy Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 160 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 40 surface acres of impoundments on Lower Big Sandy drainage and 13 surface acres of impoundments on Gravel Coulee drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source.

i. Of the 160 AFY, 120 AFY for stockwatering may come from the direct flow of Lower Big Sandy Creek.

ii. Of the 160 AFY, 40 AFY for stockwatering may come from the direct flow of Gravel Coulee.

iii. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

(c) Place of use. The Tribal Water Right for stockwatering in the Gravel Coulee and Lower Big Sandy Creek drainages may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.

(4) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in Gravel Coulee and Lower Big Sandy Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 50 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 16 surface acres of impoundments in the Gravel Coulee and Lower Big Sandy Creek drainages. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 50 AFY for fish and wildlife enhancement may come from the direct flow of Gravel Coulee and Big Sandy Creek.

(c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Gravel Coulee and Big Sandy Creek drainages, in the respective drainages of origin.

2. Box Elder Creek Drainage - 6940 AFY diversion - 4800 AF continuous storage.

a. Quantification - Source - Volume.

(1) Storage. The Tribe shall have the right to continuously store, or permit the continuous storage in Bonneau Reservoir, Brown's Reservoir, and in any new impoundments, of up to a capacity of 4800 AF from the natural flow of Box Elder Creek, or any natural flow from the source on which the impoundment is located. Subject to the 4800 AF limit on storage capacity, the Tribe shall have the additional right to divert up to 6310 AFY from the direct flow of Box Elder Creek for storage in Brown's Reservoir and in any new impoundments not located on Box Elder Creek and to divert 1950 AFY from groundwater for storage in any new or existing impoundment wherever located, as set forth in Section A.2.a.(2) of Article III. The quantity impounded by continuous storage shall not decrease the 6310 AFY, which the Tribe may divert for the purposes allowed in Section A.2.e. of Article III. In addition to the storage right set forth

in this section, the Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.2.e.(4) and (5) of Article III.

(2) Diversion. The Tribe shall have the right to use or permit the use of 6940 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 6940 AFY:

(a) Direct Flow. Of the 6940 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 6590 AFY from Box Elder Creek and its tributaries. 6310 AFY of the water from direct flow may be diverted to storage prior to application to any purposes allowed in Section A.2.e. of Article III without reducing the amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.

(b) Storage. Of the 6940 AFY, the Tribe shall have the right to divert a total of 6310 AFY from storage in one or more of the following reservoirs: Bonneau Reservoir, Brown's Reservoir, and any new impoundments for irrigation and non-irrigation purposes. The right to divert 6310 AFY from Box Elder Creek to storage is not reduced by the amount of water diverted for irrigation or non-irrigation purposes from water derived from storage.

(c) Groundwater. Of the 6940 AFY, the Tribe shall have the right to withdraw and use or to permit the withdrawal and use of up to 1950 AFY of groundwater in the Box Elder Creek drainage in compliance with Sections A.6.a. and b. of Article IV. Groundwater may be diverted to storage prior to application to any purposes allowed in Section A.2.e. of Article III without reducing the amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.

(i) Of the 1950 AFY, 180 AFY may be appropriated from the shallow alluvium in the Box Elder Creek drainage.

(ii) Of the 1950 AFY, 230 AFY may be appropriated from the volcanic bedrock in the Box Elder Creek drainage.

(iii) Of the 1950 AFY, 1570 AFY may be appropriated from the Ancestral Missouri River Channel Aquifer; provided that, should water be imported to the Reservation, the entire 1950 AFY may be appropriated from the Ancestral Missouri River Channel Aquifer. Water from the Ancestral Missouri River Channel Aquifer is a primary source for non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.

b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.2. of Article III, for the Box Elder Creek drainage, including water supplied by Box Elder Creek for off-stream storage, shall have a priority date of September 10, 1888, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

c. Period of use. The period of use of this water right shall be from January 1 through December 31 of each year.

d. Points and Means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means in the Box Elder Creek drainage on the Reservation.

e. Purposes. The Tribe's right to 6940 AFY in the Box Elder Creek drainage may be used for the following purposes; provided that, subject to the limitations set forth in Article IV, the Tribe may make a change in use or transfer of the water identified for irrigation, non-irrigation and municipal/domestic purposes.

(1) Irrigation.

(a) Volume. 6280 AFY of water in the Box Elder Creek drainage may be used for irrigation.

(b) Source. The 6280 AFY for irrigation may come from a combination of direct flow, storage and groundwater. Water from the Ancestral Missouri River Channel Aquifer is a primary source for non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.

(c) Place of use. The 6280 AFY may be used to irrigate 1930 acres at the Stoneman Farms on the Reservation.

(2) Non-Irrigation.

(a) Volume. 30 AFY of water in the Box Elder Creek drainage may be used for non-irrigation purposes.

(b) Source. The 30 AFY for non-irrigation purposes may come from direct flow, storage, or groundwater or a combination thereof in the Box Elder Creek drainage. The 30 AFY for non-irrigation use may be developed from either the shallow alluvium or volcanic bedrock aquifers.

(3) Municipal / Domestic.

(a) Volume. 350 AFY of water in the Box Elder Creek drainage may be used for municipal/ domestic purposes.

(b) Source. The 350 AFY for municipal/domestic purposes may come from the following sources:

i. 150 AFY from the shallow alluvium adjacent to Box Elder Creek.

ii. 200 AFY from the volcanic bedrock.

(4) Stockwatering - Evaporative Loss. Use of the Tribal Water Right set forth for stockwatering in the Box Elder Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 130 AFY of water may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 44 surface acres of impoundments in Box Elder Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 130 AFY for stockwatering may come from the direct flow of Box Elder Creek. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

(c) Place of use. The Tribal Water Right for stockwatering in the Box Elder Creek drainage may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.

(5) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in the Box Elder Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 150 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 50 surface acres of impoundments in Box Elder Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 150 AFY for fish and wildlife enhancement may come from the direct flow of Box Elder Creek and its tributaries.

(c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Box Elder Creek drainage, in the drainage of origin.

3. Camp Creek and Duck Creek Drainages - 280 AFY diversion.

a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 280 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 280 AFY:

(1) Direct Flow. Of the 280 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 230 AFY from Duck and Camp Creeks and their respective tributaries in the following proportions:

(a) 170 AFY from Duck Creek.

(b) 60 AFY from Camp Creek.

(2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.3.e.(2) and (3) of Article III.

(3) Groundwater. Of the 280 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 50 AFY of groundwater in the Camp and Duck Creek drainages on the Reservation, including groundwater that is hydrologically connected to surface water, in compliance with Sections A.6.a. and b. of Article IV. This right shall be exercised in the following proportions:

(a) 40 AFY from Duck Creek.

(b) 10 AFY from Camp Creek.

b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.3. of Article III, for the Camp and Duck Creek drainages shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

c. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means in the Camp Creek and Duck Creek drainages on the Reservation.

e. Purposes. The Tribe's right to 280 AFY in the Camp and Duck Creek drainages may be used for the following purposes; provided that, the Tribe may not make a change in use or transfer that results in a change in the place of use, point of diversion or place or means of storage to a place outside the drainage of origin or to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(1) Non-Irrigation.

(a) Volume. 50 AFY of water in the Camp and Duck Creek drainages may be used for non-irrigation purposes.

(b) Source. The 50 AFY for non-irrigation purposes may come from groundwater including groundwater that is hydrologically connected to surface water in the Camp and Duck Creek drainages.

(c) Place of use. The Tribal Water Right for non-irrigation purposes in Camp and Duck Creek drainages may be used in the drainage of origin on the Reservation.

(2) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Camp and Duck Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 130 AFY of water may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 19 surface acres of impoundments in the Camp Creek drainage and 23 surface acres of impoundments on Duck Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source.

i. Of the 130 AFY, 60 AFY for stockwatering may come from the direct flow of Camp Creek.

ii. Of the 130 AFY, 70 AFY for stockwatering may come from the direct flow of Duck Creek.

iii. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

(c) Place of use. The Tribal Water Right for stockwatering in the Camp and Duck Creek drainages may be used in the drainage of origin on the Reservation. The current stockwater impoundments are shown in Appendix 7.

(3) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in the Camp and Duck Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 100 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 34 surface acres of impoundments in the Camp and Duck Creek drainages. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 100 AFY for fish and wildlife enhancement may come from the direct flow of Camp and Duck Creeks.

(c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Camp and Duck Creek drainages, in the drainage of origin.

4. Gorman Creek Drainage - 60 AFY diversion.

a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 60 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 60 AFY.

(1) Direct Flow. Of the 60 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 60 AFY from Gorman Creek and its tributaries.

(2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.4.e.(1) and (2) of Article III.

b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.4. of Article III, for the Gorman Creek drainage shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

c. Period of use. The period of use of this water right shall be from January 1 through December 31 of each year.

d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means in the Gorman Creek drainage on the Reservation.

e. Purposes. The Tribe's right to 60 AFY in the Gorman Creek drainage may be used for the following purposes; provided that, the Tribe may not make a change in use or transfer that results in a change in the place of use, point of diversion or place or means of storage to a place outside the drainage of origin or to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(1) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Gorman Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 10 AFY of water in the Gorman Creek drainage may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 3 surface acres of impoundments in the Gorman Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 10 AFY for stockwatering may come from the direct flow of Gorman Creek. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

(c) Place of use. The Tribal Water Right for stockwatering in the Gorman Creek drainage may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.

(2) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in the Gorman Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 50 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 17 surface acres of impoundments in the Gorman Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 50 AFY for fish and wildlife enhancement may come from the direct flow of Gorman Creek.

(c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Gorman Creek drainage, in the drainage of origin.

5. Upper Big Sandy Creek Drainage - 290 AFY diversion.

a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 290 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 290 AFY.

(1) Direct Flow. Of the 290 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 240 AFY from the direct flow of Upper Big Sandy Creek and its tributaries;

(2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.5.e.(3) and (4) of Article III.

(3) Groundwater. Of the 290 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 50 AFY of groundwater in the Upper Big Sandy Creek drainage including groundwater that is hydrologically connected to surface water, in compliance with Section A.6.a. and b. of Article IV.

b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.5. of Article III, for the Upper Big Sandy Creek drainage shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

c. Period of use. The period of use of this water right shall be from January 1 through December 31 of each year.

d. Points and means of diversion. The Tribe may divert or permit the diversion of this water right from any place and by any means in the Upper Big Sandy Creek drainage on the Reservation; provided that, the Tribe may not construct or permit the construction of a diversion or diversions with a total capacity in excess of 100 gpm for the irrigation water right with a source on Upper Big Sandy Creek Drainage. This diversion limit also applies to any change(s) of use of this right.

e. Purposes. The Tribe's right to 290 AFY in the Upper Big Sandy Creek drainage may be used for the following purposes; provided that, the Tribe may not make a change in use or transfer that results in a change in the place of use, point of diversion or place or means of storage to a place outside the drainage of origin, or to a place upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(1) Non-Irrigation.

(a) Volume. 50 AFY of water in the Upper Big Sandy Creek drainage may be used for non-irrigation purposes.

(b) Source. The 50 AFY for non-irrigation purposes may come from groundwater, including groundwater that is hydrologically connected to surface water, in the Upper Big Sandy Creek drainage on the Reservation.

(c) Place of use. The 50 AFY for non-irrigation purposes may be used on the Reservation within the drainage of origin.

(2) Irrigation.

(a) Volume. 45 AFY of water in the Upper Big Sandy Creek drainage may be used for irrigation.

(b) Source. The 45 AFY for irrigation may come from direct flow of Upper Big Sandy Creek on the Reservation.

(c) Place of use. The 45 AFY may be used to irrigate 10 acres in the drainage of origin, on the Reservation.

(3) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Upper Big Sandy Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 45 AFY of water in the Upper Big Sandy Creek drainage may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 15 surface acres of impoundments in the Upper Big Sandy Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 45 AFY for stockwatering may come from the direct flow of Upper Big Sandy Creek. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

(c) Place of use. The Tribal Water Right for stockwatering in the Upper Big Sandy Creek drainage may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.

(4) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in Upper Big Sandy Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 150 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 50 surface acres of impoundments in the Upper Big Sandy drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 150 AFY for fish and wildlife enhancement may come from the direct flow of Upper Big Sandy Creek.

(c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Upper Big Sandy Creek drainage, in the drainage of origin.

B. Basin 40J: Beaver Creek Basin - 740 AFY diversion - 260 AFY net depletion - 665 AF continuous storage.

1. Quantification - Source - Volume.

a. Storage. The Tribe shall have the right to continuously store, or permit the continuous storage in East Fork Reservoir of up to a capacity of 665 AF from the natural flow of the East Fork of Beaver Creek. Subject to the 665 AF limit on storage capacity, the Tribe shall have the additional right to divert up to 390 AFY from the direct flow of the West Fork of Beaver Creek for storage in East Fork Reservoir as set forth in Section B.1.b. of Article III. The quantity impounded by continuous storage of the East Fork of Beaver Creek, shall not decrease the 390 AFY, which the Tribe has a right to divert from storage in East Fork Reservoir for non-irrigation purposes allowed in Section B.5. of Article III; provided that, the limit of 260 AFY on net depletion shall apply. In addition to the storage right set forth in this section, the Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections B.5.b. and c. of Article III.

b. Diversion. The Tribe shall have the right to divert 740 AFY of water in the Beaver Creek drainage from a combination of direct flow, storage and groundwater where they occur on the Reservation up to the limits on each source and the total limit of 740 AFY.

(1) Direct Flow. Of the 740 AFY, the Tribe shall have the right to divert or permit the diversion of up to 540 AFY from the direct flow of Beaver Creek and its tributaries on the Reservation. 390 AFY of the water from direct flow may be diverted to storage prior to application to any purposes allowed in Section B.5. of Article III without reducing the amount that can be applied to those purposes until such water is re-diverted from storage and applied to such purposes.

(2) Storage. The Tribe shall have the right to divert 390 AFY for non-irrigation purposes from water stored in East Fork Reservoir. The right to divert 390 AFY from the West Fork of Beaver Creek to storage is not reduced by the amount of water diverted for non-irrigation purposes from water derived from storage.

(3) Groundwater.

(a) Of the 740 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 120 AFY of groundwater including groundwater that is hydrologically connected to surface water in the Beaver Creek drainage in compliance with Section A.6.a. of Article IV. Groundwater may be diverted to storage prior to application to any purposes allowed in Section B.5. of Article III without reducing the amount that can be applied to these purposes until such water is re-diverted and applied to such purposes.

(b) Of the 740 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of an additional 200 AFY of groundwater from the volcanic bedrock aquifer and other aquifers that are not hydrologically connected to surface water in the Beaver Creek drainage in compliance with Section A.6.a. of Article IV. The limit of 260 AFY on net depletion set forth in Section B.1.a.(2) of Article III, shall not apply to groundwater use pursuant to this section. Groundwater may be diverted to storage prior to application to any purposes allowed in Section B.5. of Article III without reducing the amount that can be applied to these purposes until such water is re-diverted and applied to such purposes.

c. Net Depletion. Of the 740 AFY diverted, the Tribe shall have a right to a net depletion of 260 AFY in the Beaver Creek drainage. The calculation of net depletion shall not include evaporative loss from fish and wildlife habitat, from stockwatering, or from East Fork Reservoir, and use of groundwater that is not hydrologically connected to surface water.

2. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section B. of Article III, for the Beaver Creek drainage shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

3. Period of use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means in the Beaver Creek drainage on the Reservation.

5. Purposes. The Tribe's right to water in the Beaver Creek drainage may be used for the following purposes; provided that, subject to the limitations set forth in Article IV, the Tribe may make a change in use or transfer of the water identified for non-irrigation purposes.

a. Non-Irrigation

(1) Volume. 590 AFY of water in the Beaver Creek drainage may be used for non-irrigation purposes; provided that, the net depletion may not exceed 260 acre-feet per year in accordance with Section B.1.c. of Article III.

(2) Source. The 590 AFY for non-irrigation in the Beaver Creek drainage may come from a combination of direct flow, storage and groundwater.

(3) Place of use. The 590 AFY for non-irrigation may be used in the Beaver Creek drainage on the Reservation.

b. Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in the Beaver Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(1) Volume. 40 AFY of water in the Beaver Creek drainage may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 13 surface acres of impoundments in the Beaver Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(2) Source. The 40 AFY for stockwatering may come from the direct flow of Beaver Creek on the Reservation. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

(3) Place of use. The Tribal Water Right for stockwatering in the Beaver Creek drainage may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.

c. Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in the Beaver Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(1) Volume. 110 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 35 surface acres of impoundments in the Beaver Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(2) Source. The 110 AFY for fish and wildlife enhancement may come from the direct flow of Beaver Creek.

(3) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Beaver Creek drainage, in the drainage of origin.

C. Additional Development of Water.

In addition to the water rights specifically set forth in Sections A. and B. of Article III, the Tribe may develop water from the following sources:

1. Subject to Sections A.6.a. and b. and Section A.7.d. of Article IV, the Tribe may, as part of the Tribal Water Right, develop or permit the development of groundwater on the Reservation in addition to the amounts specified in Sections A. and B. of Article III, from new sources or from expanded use of existing sources. The priority date of such new appropriation shall be the date of development, and notwithstanding any other provision of this Compact, may only be used in priority with other water rights.

2. The Tribe may impound or permit the impoundment of surface water for stockwatering purposes in addition to the amounts set forth in Sections A. and B. of Article III; provided that the priority date of the new appropriation shall be the date of development and, notwithstanding any other provision of this Compact, may only be used in priority with other water rights; and further provided that, the maximum capacity of the impoundment or pit is less than 15 AF and the appropriation is less than 30 AFY and is from a source other than a perennial flowing stream. The Tribe may not transfer or make a change in use of the stockwater right obtained pursuant to this section.

3. On the acquisition of land after the Compact is ratified by the State and the Tribe, whichever date is later, the Tribe has the right to the use of any water right acquired as an appurtenance to the land. Such right shall become part of the Tribal Water Right in addition to the amount set forth in Article III of this Compact and shall be subject to the terms of this Compact; provided that, the right shall retain the priority date of the acquired right. The Tribe will notify DNRC of any acquisition of water in the Tribe's annual report and will identify the water right acquired.

4. The Tribe shall be entitled to use any new reserved water rights that may be created with acquisition of land after the Compact is ratified by the State and the Tribe, whichever date is later; provided that, in any drainage with a moratorium on new state permits pursuant to Section A.7.a. of Article IV, the Tribe shall defer exercise of new reserved water rights, if any, until the moratorium is lifted at which time the Tribe has the first right to use the excess water in accordance with Section A.7.b. of Article IV. The priority date of the excess water shall be the date of acquisition of the land.

5. After the ratification date of the Compact, the Tribe shall have the right to acquire off-Reservation water rights separate from acquisition of the land to which such water rights are appurtenant; provided that, water from the Tribal Water Right is not available for economic or other reasons; and provided further that, the rights shall retain the priority date held by the prior owner of the rights. Such rights shall become part of the Tribal Water Right and shall thereby become subject to Sections A.4.b.(1) and (2) of Article IV.

6. As a part of the Tribal Water Right, the Tribe shall be entitled to an allocation of 10,000 AFY of stored water in Lake Elwell, measured at the dam, for use or disposition by the Tribe for any beneficial purpose, either on or off the Reservation, pursuant to the terms of this Compact; provided that, such allocation shall be in accordance with the terms and conditions of any Act of Congress ratifying this Compact. This allocation is subject to the prior reserved water rights, if any, of any other Indian tribe, or of persons holding such reserved water rights through that tribe or through the United States. Any use or disposition of water from Lake Elwell off the Reservation by the Tribe is subject to the specific provisions relating to such use or disposition in any act of Congress ratifying this Compact.

D. Proposed Decree.

For purposes of entry in the Montana Water Court, the proposed decree of the Tribal Water Right set forth in Article III and Section A.8. of Article IV is attached as Appendix 1.

ARTICLE IV - IMPLEMENTATION OF TRIBAL WATER RIGHT

A. General Provisions.

1. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust by the United States for the benefit of the Tribe.

2. Tribal Water Right: Administration. Subject to the limitations imposed by this Compact and other federal law, the use of the Tribal Water Right shall be administered by the Tribe through the TWRD both on and off of the Reservation. Disputes, not within the jurisdiction of the Compact Board set forth in D.4. of Article IV, concerning off-Reservation use of the Tribal Water Right which raise issues concerning the application of state or federal law shall be resolved in a court of competent jurisdiction. Those disputes concerning off-Reservation use of the Tribal Water Right which do not raise issues concerning the application of state or federal law will be within the exclusive jurisdiction of the Tribe. Subject to the limitations imposed by this Compact, the Tribe shall have the final and exclusive jurisdiction to resolve all disputes concerning the Tribal Water Right between users of the Tribal Water Right. The TWRD will, among other activities, develop policies and procedures for monitoring water use, diversions,

and maintaining records of water use and development consistent with this Compact. The current and future water use and diversions will be identified by location and quantity. Final storage capacities will be based on project as-built plans, and will store no more than the water right set forth in Article III of this Compact. Administration and enforcement of the Tribal Water Right shall be pursuant to a Tribal water code, which shall be developed and adopted by the Tribe within two (2) years following the ratification date of this Compact pursuant to any requirements set forth in the Constitution of the Chippewa Cree Tribe. Pending the adoption of the Tribal water code, the administration and enforcement of the Tribal Water Right shall be by the Secretary of the Interior.

3. Use.

a. Persons Entitled to Use the Tribal Water Right. The Tribal Water Right may be used by the Tribe, or persons authorized by the Tribe.

b. Effect of Non-Use of Tribal Water Rights. Except as specifically provided herein, state law doctrines relating to the use of water rights, including but not limited to relinquishment, forfeiture or abandonment, do not apply to the Tribal Water Right. Thus, non-use of all or any of the Tribal Water Right described in Article III shall not constitute a relinquishment, forfeiture or abandonment of such rights.

4. Change in Use or Transfer.

a. On-Reservation Changes in Use or Transfer of the Tribal Water Right. Unless otherwise stated in this Compact, the Tribe may make a change in use or transfer of a water right set forth in Article III of this Compact on the Rocky Boy Reservation, including the use of water salvaged through the application of water-saving methods to expand irrigation, provided that:

(1) for each source quantified in Article III, any change in use or transfer shall not result in uses that exceed the water amount quantified for that source;

(2) any change in use or transfer shall not result in an increase in net depletion in the Beaver Creek drainage in excess of the amount specified for that source;

(3) any change in use or transfer shall not have an adverse effect on a water right recognized under state law with a priority date before the date of the change or transfer provided that for change in use or transfer of groundwater, the burden as to adverse effect shall be as set forth in Section A.6. of Article IV; and

(4) any change in use or transfer shall not change the source of the water involved in any such changes.

(5) The Tribe may not make a change in use or transfer of any water rights set forth in Article III for the purposes of stockwatering or fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for stockwatering or fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(6) The Tribe may not make a change in use or transfer any of the water rights set forth in Article III with a source on the drainages of Upper Big Sandy Creek, Camp Creek, Duck Creek and Gorman Creek that results in a change in the place of use, point of diversion or place or means of storage of the water outside the drainage of origin or to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(7) The Tribe may make a change in use or transfer of the irrigation water right with a source in Upper Big Sandy Creek drainage as set forth in Section A.5.e. of Article III so long as it does so within the diversionary limits set forth in Section A.5.d. of Article III; provided that, the net depletion shall not exceed 30 AFY.

b. Off-Reservation Changes in Use or Transfer of the Tribal Water Right. Except as may be otherwise provided in this Compact, the Tribe, pursuant to federal law, may make or permit a change in use or a transfer of the Tribal Water Right for use off the Reservation; provided that, any transfer shall be for a term of not to exceed 100 years, and may include provisions authorizing renewal for an additional term of not to exceed 100 years; and provided further that, no such transfer shall be a permanent alienation of the water transferred; and provided further that, no transfer or change in place of use shall be made to a location outside the watershed that forms the Missouri River drainage; and provided further that, if the Tribe receives a good faith offer from a third person from outside the Milk River drainage to acquire use of specified Tribal water rights and the Tribe is willing to accept the terms of the offer, the Tribe, before accepting the offer, shall allow water users in the Milk River drainage the opportunity to acquire use of such rights at the same price and on the same terms and conditions as those contained in the offer. Any change in use or transfer of any such water right involving a point of diversion or place of use located off the Reservation shall be considered an off-Reservation use; provided that, any off-Reservation use of Tribal water rights described in this Compact shall not be deemed to convert such rights to rights arising under state law, and nonuse of such rights off the Reservation shall not constitute a relinquishment, forfeiture, or abandonment of the rights; and provided further that, releases or diversions from Lake Elwell for use on the Reservation shall not be considered off-Reservation uses. The Tribe may change the point of diversion or purpose or place of use of the Tribal Water Right back to the Reservation without reduction in the amount of water provided in the Compact.

(1) Applicable Law. No person may initiate an off-Reservation use, change in use, or transfer of a Tribal water right set forth in this Compact without first applying for and receiving authorization for the use, change in use, or transfer pursuant to Montana law in effect at the time of the application. Approval of an application for a use, change in use or transfer off the Reservation by the State shall be conditioned on a valid Tribal permit for such use, change in use or transfer by the Tribe. The applicant shall provide DNRC with proof of a valid Tribal permit prior to initiating the use, change in use, or transfer.

(2) Diversion Facilities. With respect to diversion or transportation facilities located off the Reservation which are to be used in connection with the exercise of a water right set forth in this Compact, the Tribe or persons using such water rights shall apply for all permits, certificates, variances and other authorizations required by state laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water. A diversion or use of water in the exercise of such water rights may be made only after all permits, certificates, variances or other authorizations applied for pursuant to this paragraph have been obtained.

(3) Subsequent Federal or State Law. All off-Reservation uses of Tribal water rights set forth in this Compact shall comply with the requirements set forth in Section A.4.b.(1) and (2) of Article IV until such time as the statutory or common law of the United States or the State of Montana establish that off-Reservation uses of Indian water rights may occur without regard to state law.

c. Placement and Size Survey. Placement and size of stockwater impoundments and fish and wildlife enhancement areas shall be surveyed by the TWRD every five (5) years commencing one (1) year after the ratification date of this Compact. The initial survey method shall be through use of data obtained by aerial photography or an acceptable quantitative substitute with accuracy and verification equal to or greater than photography. The method may be modified by agreement between the TWRD and the DNRC. Such modification is pursuant to and shall not be deemed a modification of this Compact. The TWRD shall provide the DNRC with a completed survey for review within six (6) months of initiation of the survey.

d. Net Depletion Table. Net depletion for Tribal water uses in the Beaver Creek drainage and for irrigation uses in the Upper Big Sandy Creek drainage shall be as set forth in the table attached as Appendix 9 to this Compact. The TWRD and the DNRC may jointly agree to modify this initial table. Such modification is pursuant to, and will not be deemed a modification of, this Compact.

5. Reporting requirements.

a. On an annual basis the DNRC shall provide the Tribe and the United States with a listing of all new uses of surface and groundwater for which a permit has been issued by the DNRC in the Big Sandy and Beaver Creek drainages, and of any change in use or transfer of surface water or groundwater approved by the DNRC in the Big Sandy and Beaver Creek drainages since the last report.

b. On an annual basis the TWRD shall provide the State and the United States with a listing of all new development of the water rights described in this Compact, the net depletion in the Beaver Creek drainage, and the net depletion for irrigation in the Upper Big Sandy Creek drainage, and of all changes in use or transfers of the water rights described in this Compact since the last report. The first report by the TWRD following adoption of a Tribal Water Code shall include a listing of existing uses.

c. The TWRD, the DNRC, and the United States may agree to modify the reporting requirements set forth in subsections a. and b. of this section. Such modification is pursuant to, and will not be deemed a modification of, this Compact.

6. Groundwater.

a. New Groundwater Development Without Adverse Effect.

(1) Limits on Additional Development of Groundwater from Sources on the Reservation. After the ratification date of this Compact, the Tribe may develop or permit the development of groundwater; provided that, such development is without an adverse effect on water rights recognized under state law with a priority date before the date of development of the new appropriation.

(2) Prerequisite Administrative Remedy. The following procedure for determining whether new development of groundwater will have an adverse effect on existing groundwater rights recognized under state law shall be followed prior to seeking relief from the Compact Board:

(a) Application for development of a groundwater use on the Reservation shall be made to the TWRD.

(b) The TWRD shall review the application and make a determination of whether the new use will have an adverse effect on existing water rights recognized under state law with a priority date before the application date. Upon request by the TWRD, the DNRC shall provide information on existing state water rights as recorded in the DNRC database to the TWRD.

(c) If the TWRD determines that the new development will have an adverse effect on a water right recognized under state law with a priority date before the application date, the TWRD shall deny the application. If the TWRD determines that the new development will not have an adverse effect on a water right recognized under state law with a priority date before the application date, the TWRD shall forward the application with its determination to the DNRC.

(d) If, based upon the evidence, DNRC agrees with the TWRD's determination, the application will be approved. If, however, based upon the evidence, the DNRC cannot agree with the determination of the TWRD, DNRC shall publish notice, of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any appropriator of water or holder of a permit who, according to the records of the department, has a water right with a priority date before the application date, and may be affected by the proposed development.

(e) DNRC and the TWRD shall attempt to resolve any disagreement on the determination of no adverse effect by the TWRD on a cooperative basis. If the DNRC or a holder of a water right recognized under state law with a priority date before the application date disagree with the determination of no adverse effect, DNRC or the water users may seek relief from the Compact Board.

(f) In any proceeding concerning the effect of new groundwater development on the Reservation either before the TWRD, the DNRC, or before the Compact Board, the following shall apply:

(i) 1 - 150 Feet Wells: For new Tribal groundwater wells completed at a depth beneath the surface of 1 to 150 feet, the Tribe shall bear the burden of showing no adverse effect to groundwater uses recognized under state law with a priority date before the application date.

(ii) 150 Feet or Deeper Wells: For Tribal groundwater wells completed at a depth beneath the surface of 150 feet or deeper, the owner of a water right recognized under state law with a priority date before the application date shall bear the burden of showing any adverse effect to the water right.

b. Groundwater Development Exempt From The Showing Of No Adverse Effect. The following wells are exempt from the requirement of showing no adverse effect:

(1) Existing Tribal wells are exempt from the burden to show no adverse effect. The Tribe may develop existing wells, or replacements therefor, to their full capacity. The primary municipal and domestic wells are listed in Appendix 8. A comprehensive list of existing wells will be kept on file in TWRD offices as per the requirement to list existing uses in Section A.5. of Article IV.

(2) New Tribal groundwater wells producing from the Volcanic Bedrock Aquifer may be developed without a showing of no adverse effect.

c. Ancestral Missouri River Channel Aquifer. Groundwater from the Ancestral Missouri River Channel Aquifer shall be a primary source for non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.

7. Moratorium.

a. New State Permits. With the exceptions listed in subsection (1) of this section, the DNRC shall not process or grant an application for a permit to appropriate water from a source in the Big Sandy Creek Basin (excluding Sage Creek and Lonesome Lake Coulee), and in the Beaver Creek drainage after the date this Compact is ratified by the Montana Legislature and by the Chippewa Cree Business Committee, whichever date is later. This moratorium shall remain in effect for a minimum of 10 years and shall only be lifted pursuant to the procedures set forth in Section A.7.b of Article IV. This moratorium is not intended to apply to applications for change in appropriation under state law.

(1) The moratorium shall not apply to the following appropriations:

(a) an appropriation of groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation;

(b) an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream;

(c) an appropriation of groundwater from any deep aquifer not hydrologically connected to surface water.

(2) Within 120 days following the date the moratorium takes effect, the DNRC shall publish notice of the moratorium once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on all appropriators of water or holders of permits who, according to the records of the department, have a water right with a source in the affected drainages.

(3) The moratorium applies only to new permits issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

b. Lifting of Moratorium. After 10 years, the Tribe or an individual seeking to appropriate water in the affected drainages may petition the DNRC for removal of the moratorium, or the DNRC may initiate proceedings to lift a moratorium on its own initiative. The DNRC shall comply with the following procedure in making a determination as to whether water is available in excess of the Tribal Water Right and rights recognized under state law. The DNRC and TWRD may agree to modify procedures or provide additional procedures. Such modification is pursuant to and shall not be deemed to be a modification of the Compact.

(1) Proceedings initiated by TWRD.

(a) The TWRD shall have sixty (60) days following the filing of the petition requesting that the moratorium be lifted to provide the DNRC with data supporting its petition to lift the moratorium.

(b) Within sixty (60) days following the receipt of the data supporting TWRD's petition, the DNRC shall determine whether to lift the moratorium, and shall notify the TWRD of its determination and the grounds therefor. The TWRD shall be allowed reasonable access to any data relied upon by the DNRC for its determination.

(c) Within thirty (30) days following a determination by the DNRC not to lift the moratorium, the TWRD may challenge the DNRC's determination in a de novo proceeding before the Compact Board. The moratorium shall continue pending Compact Board proceedings and any appeal

(2) Proceedings initiated by DNRC.

(a) The DNRC may, on request by a water user or on its own initiative, commence proceedings to determine whether to lift a moratorium.

(b) The DNRC shall notify the TWRD of the commencement of proceedings to determine whether to lift the moratorium and shall submit to the TWRD all data in support of the proceedings at the same time or as soon after such data becomes available as practical or shall give the TWRD reasonable access to such data within the same time frame.

(c) The TWRD shall be given sixty (60) days following receipt of the data in support of the proceedings to submit to the DNRC a statement of the Tribe's position concerning the issue along with any supporting data and argument.

(d) The DNRC shall notify the TWRD of its determination and the grounds therefor within sixty (60) days of receipt of the Tribe's statement.

(e) Within thirty (30) days following a determination by the DNRC not to lift the moratorium, the TWRD may challenge the DNRC's determination in a de novo proceeding before the Compact Board. The moratorium shall continue pending Compact Board proceedings and any appeal.

c. Excess Water. If the moratorium is lifted pursuant to the procedure described in A.7.b. of Article IV, the Tribe shall have the first right to use the excess water for the purpose of fulfilling new reserved water rights, if any, on land acquired after the ratification date of this Compact, but before the date the moratorium is lifted. The excess water used by the Tribe shall become part of the Tribal Water Right and the tribe may make a change in use of, or transfer, including storage, of such water pursuant to Section A.4.a. of Article IV.

d. Limit on New Tribal Groundwater Development. In any drainage with a moratorium, new Tribal groundwater development pursuant to Section C.1. of Article III, by a well or developed spring from an aquifer that is hydrologically connected to surface water shall be limited to a maximum appropriation or combined appropriation from two or more wells or developed springs in a single drainage defined by this Compact to 35 gallons per minute or less, not to exceed 10 acre-feet per year.

8. Mutual Subordination. To reduce the need for daily administration of water use on and off the Reservation, water rights shall not be administered in priority, but shall be satisfied according to the following agreements.

a. Subordination to Non-Tribal Water Rights Upstream of the Reservation. The Tribal Water Right shall be subordinate to water rights recognized under state law upstream from any point on the Reservation with a priority date before the ratification date of this Compact. It is the intent of the parties that this subordination extends only to valid water rights, and not to statements of claim filed pursuant to 85-2-221, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights exempt from the permit process pursuant to 85-2-306, MCA, a list of rights as currently claimed is attached as Appendix 3. Appendix 3 will be modified by any final decree resolving claims on the affected drainages. Appendix 3 may be modified due to clerical error or omission.

b. Effect of Mitigation. Because the impact of development of the Tribal Water Right on downstream water rights recognized under State law has been mitigated by provisions of the Compact and by special measures set forth in drainage stipulations, any person claiming or holding a water right recognized under State law, or an interest in such water right, may not assert priority over, or make a call for, or claim any of the water rights of the Tribe set forth in this Compact, in any court, tribunal, or other forum.

9. Stockwatering Impoundments Limited by Surface Area. Except for new stock ponds developed under Section C.2. of Article III, the surface acreage limitations on stockwatering impoundments set forth in Article III shall be the measure of compliance with the quantification of water rights for the purpose of stockwatering.

10. Impoundments for the Purpose of Enhancing Fish and Wildlife Habitat.

a. Fish and Wildlife Enhancement Impoundments Limited by Surface Area. The surface acreage limitations on impoundments for the purpose of fish and wildlife enhancement set forth in Article III shall be the measure of compliance with the quantification of water rights for the purpose of fish and wildlife enhancement.

b. Limits on Structures. No structure for the purpose of fish and wildlife enhancement may create a potential high water line beyond the existing wet riparian habitat delineated as fish and wildlife enhancement zones on the map attached as Appendix 4.

11. Structures Mimic Natural Processes. No structure for the purpose of fish and wildlife enhancement, or new stockwatering impoundments on a perennial stream built after the ratification date of the Compact, excluding repair or replacement of existing structures, may stop the entire flow of surface water during filling of the impoundment. To accomplish this the Tribe shall build any structure to mimic natural processes by allowing water to flow through the structure, or bypass the structure during filling.

B. Big Sandy Creek Basin.

1. Operation of Bonneau Reservoir.

a. Minimum Pool / 240 AFY Stored for Satisfaction of Release. The minimum pool at Bonneau Reservoir shall be established by the Tribe. The Tribe shall store annually the minimum pool plus 240 acre-feet, if water is available. The 240 acre-feet above the minimum pool shall be stored to satisfy the release set forth in this Article and shall not be available to satisfy the Tribal Water Right. Evaporative loss shall be accounted for in setting the minimum pool and shall not be subtracted from the 240 acre-foot pool stored for downstream water users. Any change in use of the water stored in Bonneau Reservoir from irrigation to other purposes shall be without adverse effect on downstream water uses recognized under state law with a priority date before the date of change, and measures to prevent adverse effect may include release of additional water from Bonneau Reservoir.

b. Release for Off-Reservation Irrigation Use. The Tribe shall release no more than 104 AFY from Bonneau Reservoir or from direct flow of Box Elder Creek to satisfy the claims for irrigation water rights currently held by Bert Corcoran, and the Tribe shall deliver this water to a point of diversion specified in the drainage stipulation between the Tribe and Mr. Corcoran attached as part of Appendix 2; provided that, the Tribe shall have no responsibility to upgrade or to increase the capacity of the existing delivery system; and further provided that, the Tribe shall not be required to release water from Bonneau Reservoir below the minimum pool established by the Tribe plus 240 acre-feet prior to satisfaction of the 240 acre-feet per year release set forth in Section B.1.c. of Article IV, and the minimum pool at all other times. The 104 AFY release shall be in accordance with a delivery schedule agreed to by Mr. Corcoran, or his successors in interest, and the TWRD. Mr. Corcoran's claims for irrigation water rights shall be specified in the drainage stipulation between the Tribe and Mr. Corcoran attached as part of Appendix 2. Nothing in the drainage stipulation or in this Compact shall affect any existing right that Mr. Corcoran may have to the use of on-Reservation conveyance and distribution systems to deliver this water.

c. 240 AFY Release. The Tribe shall annually release the first 240 acre-feet of water, as measured near the confluence of Box Elder Creek and Lower Big Sandy Creek, stored in Bonneau Reservoir above the minimum pool, at the request of the downstream irrigation water users as set forth below, for maintenance of instream flow and for domestic and stock purposes on Lower Big Sandy Creek. The 240 AF of water, once released, shall be designated as an instream flow and shall be senior to all Tribal diversions and all non-domestic and non-stockwater rights recognized under state law from the point of release to the confluence with the Milk River. The Tribe shall not divert from direct flow on Lower Big Sandy Creek between its confluence with Box Elder Creek and the Reservation boundary at Stoneman Farms, as that boundary exists on the effective date of this Compact, during release of the 240 AF of water to downstream water users in the months of July and August. A structure that will bypass the peak scheduled release will be constructed for any diversion of the Tribal Water Right upstream of the confluence of Big Sandy Creek with Gravel Coulee. Under no circumstances shall the Tribe be required to release more than 240 AFY of water to maintain instream flow and for domestic and stock purposes.

d. Schedule for 240 AFY. The method for determining the schedule of releases is as follows: Water users on Lower Big Sandy Creek with drainage stipulations listed in Appendix 2 shall elect a three member Bonneau Release Committee to determine the schedule of release for the 240 AFY. The Committee shall notify the DNRC which shall notify the TWRD by May 1st of each year of the requested schedule. The schedule shall not exceed the operating standards of Bonneau Reservoir or result in unreasonable interference of the Tribe's use of water stored in the Reservoir. If the TWRD does not receive notice by May 1 of any year, the TWRD shall release 2 cfs continuously for July and August in accordance with Section B.1.c. of Article IV. DNRC shall notify water users which, according to the records of the Department, have a water right recognized under state law with a source on Box Elder Creek, or on Big Sandy Creek between the confluence with Box Elder Creek and the confluence with the Milk River, that the release may not be diverted. After May 1, at the request of the Bonneau Release Committee, the DNRC shall request the Tribe to alter the rate of release and the Tribe may agree to comply. At the request of the Tribe, the DNRC shall request the Bonneau Release Committee to agree to forego the release, and if the Committee believes the purposes for the release as set forth in Section B.1.c. of Article IV are being satisfied without the release, the Committee may, in any year, agree to forego the release. When streamflow in lower Big Sandy Creek at the bypass structure referred to in Section B.1.c. of Article IV, exceeds the peak flow specified in the designated release schedule, such excess flow can be diverted by the Tribe, subject to the diversion limits designated in Article III.

e. Effective Date for Bonneau Reservoir Operational Plan. Notwithstanding ratification of this Compact by the parties, the operational plan for Bonneau Reservoir set forth in Sections B.1.a. through c. of Article IV, shall not become effective until completion of the enlargement of Bonneau Dam.

2. Water Use on Lower Big Sandy Creek Drainage.

a. 2 cfs Bypass at Stoneman Farms. Structures will be constructed at each point of diversion on Lower Big Sandy Creek which allow a minimum of 2 cfs of water flow from direct and return flow, if available, to pass year around from the most downstream diversion on the Reservation on Lower Big Sandy Creek. The 2 cfs shall be designated as an instream flow and shall be senior in priority to Tribal diversions and all non-domestic and non-stockwatering water rights recognized under state law with a point of diversion between the bypass and the confluence with the Milk River. When streamflow in Lower Big Sandy Creek exceeds 2 cfs outside the scheduled 240 AF release period, such excess flow can be diverted by the Tribe subject to diversion limits designated in Article III.

b. Water Quality Issues.

(1) Monitoring Wells. Within one year following the effective date of this Compact, a monitoring well network adequate to detect saline seep shall be installed to depths no greater than 30 feet near the proposed Enlarged Stoneman Reservoir site shown in Appendix 6. The location of the wells will be established by TWRD and DNRC (or its representative) and groundwater level and quality shall be measured on a quarterly basis to establish baseline conditions.

(2) Water Quality Monitoring Before Construction. Within one year following the effective date of this Compact, a surface water quality network will be established by TWRD and DNRC and quarterly sampling continued for a sufficient period of time to establish the water quality baseline conditions referred to above, adjacent to and below the Stoneman Farms project. The results of the baseline analysis will be used to establish a threshold value for water quality degradation associated with salinity which will trigger the requirement for more extensive study.

(3) Water Quality Monitoring After Construction. After construction of the Stoneman Reservoir enlargement, monitoring of the wells and surface water quality will be resumed to evaluate changes in water quality. If salinity measurements result in a trend of increasing salinity on a sustained basis over a reasonable period of time, the TWRD or DNRC may petition the Compact Board to appoint a technical expert to conduct an analysis to identify the causes of the increasing salinity and recommend appropriate remedies. The analysis and recommendations may include sources of salinity off the Reservation.

(4) Remedies. The results of the analysis shall be submitted to the DNRC and to the TWRD which shall make a joint effort to resolve the degradation issue based on the analyses. If the analysis includes sources of salinity off the Reservation, the DNRC shall assist the TWRD in obtaining reasonable access onto the land off the Reservation for the purpose of observation. If the DNRC and the TWRD, are unable to resolve the issue within 30 days through joint effort, the DNRC, the TWRD, or any affected water user, may petition the Compact Board for relief. The Compact Board shall have jurisdiction over any contributor to the salinity problem and shall fashion its remedy in a manner proportionate to the causes contributing to the problem. The remedy fashioned by the Compact Board for salinity problems shall be limited to issuance of an order to cease and desist the practice or practices leading to the salinity problems. The remedies set forth in this section shall be in addition to any remedies or water quality standards provided for under other applicable law.

C. Beaver Creek Drainage.

1. Moratorium on Tribal Consumptive Uses. For a period of five years following the ratification date of the Compact, there shall be a moratorium on the development of Tribal consumptive uses from surface water in the Beaver Creek drainage. During this moratorium, a monitoring network consisting of three continuous recording stations will be installed and the resulting data analyzed to determine if Beaver Creek gains or loses flow between the confluence of East and West Fork and the Reservation boundary. Location of the three gages shall be:

(1) the West Fork of Beaver Creek at the location the Tribe intends to divert water to the East Fork;

(2) the confluence of the East and West Forks of Beaver Creek; and

(3) the Reservation boundary at the most downstream point on Beaver Creek. A staff gage shall also be installed in East Fork Reservoir following enlargement of the Reservoir.

2. Development of Management Plan. Based on the results of the five years of gage data on Beaver Creek, the Tribe and the Montana Department of Fish, Wildlife and Parks shall work cooperatively to develop a fishery and recreational management plan. The plan may include modifications in minimum instream flows set forth in Section C.3. of Article IV. Such modification is pursuant to, and will not be deemed a modification of, this Compact. The management plan is not binding on any party and shall not be used to modify minimum instream flows until it is approved by the Tribe and the Montana Department of Fish, Wildlife and Parks.

3. Operation of East Fork Reservoir Following Enlargement and Pending Adoption of a Management Plan. During the moratorium imposed by Section C.1. of Article IV, or pending adoption of the management plan authorized by Section C.2. of Article IV, East Fork Reservoir may be enlarged; provided that,

a. The enlarged Reservoir shall be used only for recreational purposes during the five year moratorium. However, after the five year moratorium period and pending adoption of the management plan, the enlarged Reservoir may be utilized for multiple purposes, but remains subject to the limitations set forth under Sections C.3.b., c., and d. of Article IV.

b. Any surface water diversion from the West Fork of Beaver Creek and its tributaries on the Reservation to the East Fork of Beaver Creek shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass year around; provided that, the storing of water in East Fork Reservoir from the East Fork of Beaver Creek shall not be considered a diversion for the purposes of this provision.

c. For the drainage area below the confluence of the East and West Forks of Beaver Creek to the northern Reservation boundary, any surface water diversion from Beaver Creek and its tributaries on the Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass year around; provided that, the storing of water in East Fork Reservoir from the East Fork of Beaver Creek shall not be considered a diversion for the purposes of this provision.

d. The Tribe shall release water from East Fork Reservoir to augment streamflow on Beaver Creek if the flow at the confluence of East and West Fork or below the most downstream diversion on the Reservation, whichever is the most downstream, falls below 1 cfs; provided that, the Tribe shall not be required to release water if the level of the enlarged Reservoir reaches or falls below the minimum pool; and provided further that, the Tribe shall not be required to release water if the flow at the Reservation boundary at the most downstream point on Beaver Creek exceeds 2 cfs.

4. Operation of East Fork Reservoir Prior to Enlargement. Prior to enlargement of East Fork Reservoir and pending adoption of the management plan authorized by Section C.2. of Article IV, the following diversionary constraints are in effect.

a. Any surface water diversion from the West and East Forks of Beaver Creek and its tributaries on the Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass the structure year around.

b. For the drainage area below the confluence of the East and West Forks of Beaver Creek to the northern Reservation boundary, any surface water diversion from Beaver Creek and its tributaries on the Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass year round.

D. Enforcement - Chippewa Cree-Montana Compact Board.

1. Establishment of Board. There is hereby established the Chippewa Cree-Montana Compact Board. The Board shall consist of three members: one member selected by the Governor of the State of Montana from up to six nominees, up to three nominated by the Commissioners of Chouteau County and up to three nominated by the Commissioners of Hill County; one member appointed by the Chippewa Cree Business Committee; and one member selected by the other two members. If the Governor fails to select a board member from the list of nominees, the Commissioners of Chouteau and Hill Counties may select the member. All members shall be appointed within six months of the ratification date of this Compact and within thirty days of the date any vacancy occurs. If an appointment is not timely made by the Governor or County Commissioners, the Director of DNRC or his/her designee shall fill the State's position. If an appointment is not timely made by the Chippewa Cree Business Committee, the Director of the TWRD or his/her designee shall fill the Tribe's position. Each member shall serve a five-year term and shall be eligible for reappointment. The initial term of each member shall be staggered with one member serving a five-year term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen by lot. Expenses of the members appointed by the State and the Tribe shall be borne by the entity appointing the member. The expenses of the third member and all other expenses shall be borne equally by the Tribe and the State, subject to the availability of funds.

2. Membership. Should the two appointed members fail to agree on the selection of a third member within sixty days of the date of appointment of the second member, or within thirty days after any vacancy occurs, the following procedure shall be utilized:

a. Within five days thereafter each member shall nominate three persons to serve as a member of the Board;

b. Within fifteen days thereafter each member shall reject two of the persons nominated by the other member;

c. Within five days thereafter, the remaining two nominees shall be submitted to the Dean of the University of Montana School of Law who shall select the third member from the two nominees.

3. Quorum and Vote Required. Two members of the Board shall constitute a quorum if reasonable notice of the time, place, and purpose of the meeting, hearing, or other proceeding has been provided in advance to the absent member. All Board decisions shall be by a majority of the Board, shall be in writing and, together with any dissenting opinions, shall be served on all parties in the proceeding before the Board, and on the parties to this Compact.

4. Jurisdiction of the Board. The Chippewa Cree-Montana Compact Board shall have jurisdiction to resolve controversies over the right to the use of water as between users of the Tribal Water Right and users of water rights recognized under state law including any contributor to a salinity problem. Such controversies shall include, but shall not be limited to, disputes as to the meaning of this Compact.

5. Pre-requisite Administrative Remedy.

a. Any non-tribal water user concerned that a new development or change in use of water by the Tribe is inconsistent with the Compact shall first contact the Havre Regional Office of the DNRC. If the DNRC and the TWRD are unable to resolve the issue in a reasonable time through discussion, DNRC, the water user, or the Tribe may seek relief through the Compact Board. The Tribe agrees to allow DNRC reasonable access onto Tribal land to observe the challenged development or change in use.

b. The Tribe or any tribal water user concerned that a new development or change in use or transfer of water by non-tribal water users is inconsistent with the Compact shall first contact the TWRD. If the TWRD and the DNRC are unable to resolve the issue in a reasonable time through discussion, the TWRD or the Tribal water user may seek relief through the Compact Board. The DNRC agrees to assist the TWRD in obtaining reasonable access onto the non-tribal water user's land to observe the challenged development or change in use or transfer.

c. The TWRD and the DNRC may jointly develop supplemental procedures as necessary or appropriate. Such supplemental procedures are pursuant to, and will not be deemed a modification of, this Compact.

6. Powers and Duties. The Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint a technical expert for the purposes of Section B.2.b. of Article IV. The Tribe and the State shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribe and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The parties to the controversy may present evidence and cross examine any witnesses. The Board shall determine the controversy and grant any appropriate relief, including a temporary order; provided that, the Board shall have no power to award money damages, costs, or attorneys fees. All decisions of the Board shall be by majority vote and in writing. The Board shall adopt necessary rules and regulations to carry out its responsibilities within six months after its first meeting. All records of the Board shall be open to public inspection, except as otherwise ordered by the Board.

7. Review and Enforcement of Board Decisions.

a. Decisions by the Board shall be effective immediately, unless stayed by the Board. Unless otherwise provided by Congress, only the United States and parties to the proceedings before the Board may appeal any final decision by the Board to a court of competent jurisdiction within thirty (30) days of such decision. The hearing on appeal shall be a trial de novo. The notice of appeal shall be filed with the Board and served personally or by registered mail upon all parties to the proceeding before the Board.

b. Unless an appeal is filed within thirty (30) days of a final decision of the Board, as provided in Section D.7.a. of Article IV, any decision of the Board shall be recognized and enforced by any court of competent jurisdiction on petition of the Board, or any party before the Board in the proceeding in which the decision was made.

c. A court of competent jurisdiction in which a timely appeal is filed pursuant to Section D.7.a. of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section D.7.b. of Article IV, may order such temporary or permanent relief as it considers just and proper.

d. Any appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to Section D.7.a. of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section D.7.b. of Article IV, in the manner and to the same extent as from orders or judgments of the court in a civil action.

e. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the court the record of the proceedings before the Board within sixty (60) days of filing of a notice of appeal.

8. Waiver of Immunity. The Tribe and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, in order to permit the resolution of disputes under this Compact by the Chippewa Cree-Montana Compact Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribe or the State shall not extend to any action for money damages, costs, or attorneys' fees. The parties agree that only Congress can waive the immunity of the United States. The participation of the United States in the proceedings of the Compact Board shall be as provided by Congress.

ARTICLE V - DISCLAIMERS AND RESERVATIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights.

1. The relationship between the water rights of the Chippewa Cree Tribe described herein and any rights to water of any other Indian Tribe, or of any federally derived water right of an

individual, or of the United States on behalf of such Tribe or individual shall be determined by the rule of priority.

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other Indian tribes and tribal members of other Indian tribes.

3. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of an Indian Tribe other than the Chippewa Cree Tribe regarding its boundaries or property interests.

4. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands other than those of the Chippewa Cree Tribe.

B. General Disclaimers.

Nothing in this Compact shall be so construed or interpreted:

1. As a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State, or the United States and any other state;

2. To preclude the acquisition or exercise of a right to the use of water by any member of the Tribe outside the Reservation by purchase of such right or by acquisition of land, or by application to the State.

3. To determine the relative rights inter sese of persons using water under the authority of the State or the Tribe;

4. To limit in any way the rights of the parties or any other person to litigate any issues or questions not resolved by this Compact;

5. To authorize the taking of a water right which is vested under state or federal law;

6. To create or deny substantive rights through headings or captions used in this Compact;

7. To preclude or to discourage the Tribe from acquiring, by contracting or by other means, water rights in addition to the rights acquired under this Compact from any existing or future federal storage facilities off the Reservation;

8. To address or prejudge whether, in any interstate apportionment, the Tribe's water right shall be counted as part of the waters apportioned to the State;

9. To prohibit the Tribe, or the United States on behalf of the Tribe, from objecting in any general stream adjudication in Montana Water Court to any claims to water rights not protected by a drainage stipulation set forth in Appendix 2 of this Compact; provided that, the United States, on behalf of any other Indian tribe, or in its own right, may raise valid objections to any claims listed in Appendix 2 and Appendix 3 of this Compact;

10. To constitute a waiver of sovereign immunity by the Tribe, State, or United States, except as is expressly set forth in this Compact;

11. Unless otherwise provided by Congress, to prevent the United States, as trustee for the Tribe, or the Tribe itself, from filing an action in any court of competent jurisdiction, to prevent any party from interfering with the Tribe in the enjoyment of any water right in this Compact.

C. Rights Reserved.

The parties expressly reserve all rights not granted, recognized or relinquished in this Compact.

D. Obligations of United States Contingent.

Notwithstanding any other language in this Compact, except as authorized under other provisions of federal law, the obligations of the United States under this Compact shall be contingent on authorization by Congress.

E. Expenditures of Money Contingent.

The expenditure or advance of any money or the performance of any work by the United States or the Tribe pursuant to this Compact which may require appropriation of money by Congress or allotment of funds shall be contingent on such appropriation or allotment being made.

ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

The Tribe and the State of Montana agree to support federal legislation ratifying this Compact that will accomplish the following:

A. Off-Reservation Water Sources.

1. Lake Elwell Water Supply. The State and the Tribe agree to support federal legislation that will provide an allocation of 10,000 acre-feet per year from storage water in Lake Elwell, as described in Section C.6. of Article III. The priority date of this water right shall be that established for the source of supply. This water right will be held in trust and will be part of the Tribal Water Right.

2. Right to Participate in Future Projects to Import Water to the Milk River. The Tribe shall have the right to participate in any project to augment the water supply in the Milk River system by transferring water from another drainage, and to have any such augmentation project deliver any entitlement of the Tribe to water to a point on the Reservation designated by the Tribe.

B. Provision Of A Municipal, Rural, And Industrial Water Supply System, And A Tribal Economic Development Fund.

The State and Tribe agree to support federal legislation that will authorize and fund a municipal, rural and industrial water system adequate to meet the future MR&I water needs of the Tribe, according to the needs and population projections as set forth in the Municipal, Rural and Industrial (MR&I) Water Supply System Needs Assessment prepared for the Bureau of Reclamation, U.S. Department of the Interior (January, 1996), through either a regional system or a system serving the Reservation only. The State and Tribe further agree to support federal legislation that will establish an economic development fund as agreed to by the Tribe and the Department of the Interior, or by the Tribe and the Montana Congressional Delegation. Support by the Department of Interior for the proposed MR&I system will depend on a demonstration of feasibility and appropriate allocation of costs.

C. Implementation Contingencies and Cost Share of Administration and Mitigation.

Implementation of this Compact shall be contingent upon the appropriation of necessary funds by the Congress and by the Montana Legislature. The performance of any obligation by any party under this Compact shall be contingent upon appropriation of funds therefor. No liability shall accrue to any party in case necessary funds are not appropriated. The State and the Tribe agree to recommend the following cost share for administration and mitigation necessary to implement the Compact to the Montana State Legislature and the Congress for appropriation on a schedule consistent with implementation as contemplated in this Compact.

1. The State and the Tribe agree to support federal legislation to appropriate $3,070,000 for the administration of the Tribal Water Right by the Tribal Water Resources Department as set forth in Articles III and IV of the Compact, including but not limited to: stream flow gages; diversion/bypass structures on Big Sandy Creek; aerial survey of impoundments on the Reservation; and development of a Tribal Water Code.

2. The State and the Tribe agree to support state legislation to appropriate $150,000 for the following purposes as set forth in Articles III and IV of the Compact: water quality discharge monitoring wells and monitoring program; diversion structure on Big Sandy Creek; conveyance structure on Box Elder Creek; and purchase of contract water from Lower Beaver Creek Reservoir.

3. The state agrees to provide services, subject to the availability of funds, valued at $400,000 for administration required by the Compact and for water quality sampling required by this Compact.

ARTICLE VII - FINALITY, SETTLEMENT OF CLAIMS, AND EFFECTIVENESS OF COMPACT

A. Ratification and Effectiveness of Compact.

1. This Compact shall become effective on the date it is ratified by the Tribe, by the State, and by the Congress of the United States, whichever date is latest; provided that, notwithstanding the provisions of Section 85-2-702(2), MCA, those aspects of the Compact specifically designated in Section A.2. of Article VII, shall become effective as stated therein. Upon ratification of this Compact by the Tribe and by the State, whichever is later, the terms of this Compact may not be altered, voided, or modified in any respect without the consent of both the Tribe and the State. Once ratified by Congress, the Tribe, and the State, the Compact may not be modified without the consent of the Tribe, the State, and the United States.

2. As between the State and the Tribe, the moratorium on state permits in the Big Sandy Creek Basin set forth in Section A.7. of Article IV, shall become effective upon the date the Compact is ratified by the Montana Legislature and by the Chippewa Cree Business Committee, whichever date is later. The reservoir operational plan for Bonneau Reservoir set forth in Section B.1 of Article IV shall not become effective until the Reservoir is enlarged.

3. Notwithstanding any other provision in this Compact, the Tribe reserves the right to withdraw as a party to this Compact -

a. if Congress has not ratified this Compact within four (4) years from the date the Compact is ratified by the Tribe and by the State, whichever date is later, or

b. if the municipal, rural, and industrial water supply system which the feasibility study identifies as the preferred alternative to serve the Rocky Boy's Reservation, or an equivalent water supply system as determined by the Tribe, is not authorized within four (4) years of the date the Compact is ratified by the Tribe and by the State, whichever date is later, or

c. if appropriations are not authorized by Congress, including appropriations for planning, design, and other pre-construction work on the municipal, rural, and industrial water supply system authorized by Congress to serve the Rocky Boy's Reservation, within five (5) years of the date the Compact is ratified by the Tribe and by the State, whichever date is later, or

d. if appropriations are not made in the manner contemplated by the federal legislation authorizing the Tribal municipal, rural, and industrial water supply system, or

e. if construction of the Tribal municipal, rural, and industrial water supply system authorized by Congress to serve the Rocky Boy's Reservation, has not commenced within seven (7) years from the date the Compact is ratified by the Tribe and by the State, whichever date is later, or

f. if construction of the Tribal municipal, rural, and industrial water supply system authorized by Congress to serve the Rocky Boy's Reservation, has not been completed within fourteen (14) years from the date the Compact is ratified by the Tribe and by the State, whichever date is later.

The Tribe may exercise its right to withdraw by sending to the Governor of the State of Montana and to the Secretary of the Interior by certified mail a resolution of the Chippewa Cree Business Committee stating the Tribe's intent to withdraw and specifying a withdrawal date not sooner than 30 days from the date of the resolution. On the date designated in the resolution for Tribal withdrawal, this Compact shall become null and void without further action by any party, and the parties agree to resume negotiation in good faith for quantification of the water rights of the Chippewa Cree Tribe and entry of a decree in a court of competent jurisdiction. If the Tribe fails to take action to withdraw within five (5) years following the fourteen (14) year deadline for completion of the water system, all provisions of the Compact shall remain in effect.

4. Notwithstanding any other provision in this Compact, the Department of the Interior reserves the right to refuse support for federal legislation ratifying this Compact.

B. Incorporation Into Decrees and Disposition of Federal Suits.

1. The Tribe and the State agree to defend the provisions and purposes of this Compact including the quantification set forth in Article III, from all challenges and attacks in all proceedings pursuant to this Section B of Article VII.

2. Within 180 days of the date this Compact is ratified by the Chippewa Cree Business Committee, the State of Montana, and Congress, whichever is latest, the Tribe, the State, or the United States shall file, in the general stream adjudication filed by the State of Montana pursuant to the provisions of 85-2-702(3), MCA, a motion for entry of the proposed decree set forth in Appendix 1 as the decree of the water rights held by the United States in trust for the Chippewa Cree Tribe of the Rocky Boy's Reservation. If the court does not approve the proposed decree submitted with the motion within three years following the filing of the motion, the Compact shall be voidable by agreement of the parties. If the court approves the proposed decree within three years, but the decree is subsequently set aside by the court or on appeal, the Compact shall be voidable by agreement of the parties. The parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666 or other provision of federal law.

3. Consistent with section 3-7-224, MCA, setting forth the jurisdiction of the chief water judge, for the purposes of section 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to Article III, Section A.8. of Article IV, and Appendix 1, and may extend to other sections of the Compact only to the extent that they relate to the determination of existing water rights. The final decree shall consist of Article III and Section A.8. of Article IV as displayed in Appendix 1 and such other information as may be required by 85-2-234, MCA. Nevertheless, pursuant to section 85-2-702(3), MCA, the terms of the entire Compact must be included in the preliminary decree without alteration for the purpose of notice.

4. Upon the issuance of a final decree by the Montana Water Court, or its successor, and the completion of any direct appeals therefrom, or upon the expiration of the time for filing any such appeal, the United States, the Tribe, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed. R. Civ. P., to dismiss the Tribe's claims, and any claims made by the United States as trustee for the Tribe, in United States v. Aageson, No. CIV-79-21-GF (D. Mont. 1979) (hereinafter referred to as "Aageson") and such claims may only be refiled if the Tribe exercises its option to withdraw as a party to the Compact pursuant to Section A.3. of Article VII. This Compact shall be filed as a consent decree in Aageson only if, prior to the dismissal of Aageson as provided in this Article, it is finally determined in a judgment binding upon the State of Montana that the state courts lack jurisdiction over, or that the state court proceedings are inadequate to adjudicate, some or all of the water rights asserted in Aageson.

C. Tribal Settlement of Water Claims.

The parties intend that the water rights and other rights confirmed to the Tribe in this Compact are in full satisfaction of the Tribe's water rights claims, including federal reserved water rights claims based on Winters v. United States, 207 U.S. 564 (1908). In consideration of the rights confirmed to the Tribe in this Compact, including rights to the future development of water pursuant to Section C. of Article III, and of performance by the State of Montana and the United States of all actions required by this Compact, including entry of a final order issuing the decree of the reserved water rights of the Tribe held in trust by the United States as quantified in the Compact and displayed in Appendix 1, the Tribe and the United States as trustee for the Tribe hereby relinquish any and all claims to water rights of the Chippewa Cree Tribe within the State of Montana existing on the date this Compact is ratified by the State and the Tribe, whichever date is later.

D. Binding Effect.

Upon the effectiveness of any provision of this Compact, the terms of that provision will be binding:

1. Upon the State and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State of Montana; provided that, the validity of consent, ratification, or authorization by the State is to be determined by Montana law;

2. Upon the Tribe and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the Tribe to the use of the Tribe's water right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribe; provided that, the validity of consent, ratification or authorization by the Tribe is to be determined by tribal law; and

3. Upon the United States and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the United States to the use of water in the State of Montana; provided that, the validity of consent, ratification or authorization by the United States is to be determined by federal law; and further provided that, nothing contained in this Compact affects any claim of any Indian tribe other than the Chippewa Cree Tribe, or of persons claiming water through any such other Indian tribe, or the right of any Indian tribe other than the Chippewa Cree Tribe, or persons claiming water through any such other Indian tribe, to pursue a claim to any water from any source based on any theory of right or entitlement.

ARTICLE VIII - LEGISLATION

The State and Tribe agree to seek enactment of any legislation necessary to effectuate the provisions and purposes of this Compact, and to defend the provisions and purposes of this

Compact from all challenges and attacks; provided that, no provision of the Compact shall be modified as to substance except as may be provided herein.

IN WITNESS WHEREOF the representatives of the State of Montana, the Chippewa Cree Tribe of the Rocky Boy's Reservation, and the United States have signed this Compact on the 28th day of February, 2000.

History: **En. Sec. 1, Ch. 265, L. 1997.**

Part 7
United States Fish and Wildlife Service, Black Coulee and Benton Lake-Montana Compact

85-20-701. United States Fish and Wildlife Service-Montana compact ratified. The compact entered into by the State of Montana and the United States Fish and Wildlife Service and filed with the secretary of state of the State of Montana under the provisions of 85-2-702 on March 26, 1997, is ratified. The compact is as follows:

WATER RIGHTS COMPACT
STATE OF MONTANA
UNITED STATES OF AMERICA, FISH AND WILDLIFE SERVICE

This Compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims existing on the effective date of the Compact to water for Black Coulee and Benton Lake National Wildlife Refuges administered by the U.S. Fish and Wildlife Service within the State of Montana.

RECITALS

WHEREAS, in 1979 the United States filed in the United States District Court for the District of Montana several actions to adjudicate, inter alia, its rights to water with respect to Black Coulee National Wildlife Refuge, see United States v. Aageson, No. CV-79-21-GF;

WHEREAS, the State of Montana, in 1979 pursuant to Title 85, Chapter 2 of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, 85-2-703, MCA, provides that the state may negotiate settlement of claims by the federal government to non-Indian reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of Benton Lake and Black Coulee National Wildlife Refuges, in the State of Montana;

WHEREAS, the United States, in quantifying its reserved water rights recognizes the need to accommodate the interests of the state and its citizens by providing for the development and use of water in the vicinity of the Fish and Wildlife Service Refuges to the extent that it is possible to do so without materially affecting the rights and interests of the United States;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§ 516-17 (1968);

WHEREAS, The Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of Interior pursuant to 43 U.S.C. § 1457 (1986, Supp. 1992);

NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE I
DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

(1) "Abstract" means the copy of the document entitled "Abstract of U.S. Fish and Wildlife Service Water Rights" referenced in this Compact as Appendix 1.

(2) "Benton Lake National Wildlife Refuge" means those lands located in Montana that were withdrawn and reserved by Executive Order No. 5228 of November 21, 1929.

(3) "Black Coulee National Wildlife Refuge" means those lands and interests in lands located in Montana that were acquired pursuant to, or withdrawn and reserved by Executive Order 7801 of January 28, 1938.

(4) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

(5) "Effective date of this Compact" means the date of the ratification of the Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever is later.

(6) "Groundwater" means water that is beneath the ground surface.

(7) "Non-consumptive" means a water right considered to be non-consumptive by the decree, permit or law authorizing the use, because it results in no depletion of water from the source.

(8) "Parties" means the State of Montana and the United States.

(9) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

(10) "Recognized under state law" when referring to a water right or use means a water right or use protected by state law, but does not include state recognition of a federal or tribal reserved water right.

(11) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "state" means the Director of the Montana Department of Natural Resources and Conservation or his or her designee.

(12) "United States" means the federal government and all officers, agencies, departments and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of the Interior, or his or her designees.

ARTICLE II
WATER RIGHT

The parties agree that the following water rights are in settlement of the reserved water rights of the United States for the Refuges described. The parties to this agreement recognize that the water rights described in this Compact are junior to any tribal water rights with a priority date before the effective date of the Compact, including aboriginal rights, if any, in the basins affected. All reserved water rights described in this Article are subject to Article IV, section A of this Compact.

A. Benton Lake National Wildlife Refuge

1. Quantification: The United States shall have the right to water from the following sources where they occur on the Refuge:

a. Consumptive Use: The United States has a reserved water right to 2 acre-feet per year diverted at a maximum rate of 45 gpm from groundwater beneath the Benton Lake National Wildlife Refuge.

b. Natural Flow: The United States has a reserved water right to the natural flow in the Lake Creek drainage including the unnamed tributaries to Benton lake where the drainage enters the Refuge in the amount of the natural flow remaining after satisfaction of the following rights:

(1) all rights recognized under state law with a priority date prior to the effective date of this Compact;

(2) any rights for stock watering ponds with a priority date after the effective date of this Compact and a maximum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet per year from a source other than a perennial flowing stream; and

(3) any right to appropriate groundwater with a priority date after the effective date of this Compact by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet per year.

2. a. Priority Date: The United States has a priority date of November 21, 1929, for the reserved water rights described in this Compact for Benton Lake National Wildlife Refuge.

b. Subordination: The natural flow water right is subordinate to:

(1) any use recognized under state law with a priority date before the effective date of this Compact;

(2) any use considered non-consumptive as defined by this Compact;

(3) stock watering ponds with a priority date after the effective date of this Compact and with a maximum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet per year from a source other than a perennial flowing stream; and

(4) appropriation of groundwater with a priority date after the effective date of this Compact by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet per year.

3. Period of Use: The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and means of diversion: Any point on the Refuge and by any means subject to the terms of this Compact.

5. Purposes: The United States right to water may be used for the following purposes, provided that, subject to the limitations set forth in Article III. section E., the United States may change the use of water identified for consumptive use.

a. Consumptive Use: The United States water right to groundwater shall be used at the Refuge headquarters for the purposes of the Refuge.

b. Natural Flow: The United States water right to natural flow shall be used on the Benton Lake National Wildlife Refuge for wildlife habitat maintenance and enhancement.

B. Black Coulee National Wildlife Refuge

1. Quantification: The United States shall have the right to water from the following sources where they occur on Black Coulee National Wildlife Refuge:

2. Natural Flow: The United States has a reserved water right for the natural flow in the Black Coulee drainage where the drainage enters the Refuge in the amount of the natural flow remaining after satisfaction of the following rights:

(1) all rights recognized under state law with a priority date prior to the effective date of this Compact;

(2) any rights for stock watering ponds with a priority date after the effective date of this Compact and a maximum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet per year from a source other than a perennial flowing stream; and

(3) any right to appropriate groundwater with a priority date after the effective date of this Compact by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet per year.

3. a. Priority Date: The United States has a priority date of January 28, 1938 for the water rights described in this Compact for Black Coulee National Wildlife Refuge.

b. Subordination: The natural flow water right is subordinate to:

(1) any use recognized under state law with a priority date before the effective date of this Compact;

(2) any use considered non-consumptive as defined by this Compact;

(3) stock watering ponds with a priority date after the effective date of this Compact and with a maximum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet per year from a source other than a perennial flowing stream; and

(4) appropriation of groundwater with a priority date after the effective date of this Compact by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet per year.

4. Period of Use: The period of use of this water right shall be from January 1 through December 31 of each year.

5. Points and means of diversion: any point on the Refuge and by any means subject to the terms of this Compact.

6. Purposes: The United States water right to natural flow shall be used on the Black Coulee National Wildlife Refuge for wildlife habitat maintenance and enhancement.

C. Emergency Fire Suppression

The use of water for emergency fire suppression benefits the public, and is necessary for the purposes of the various Fish and Wildlife Service refuges. The United States, may as part of its reserved water right, divert water for fire suppression at all of the Fish and Wildlife Service Refuges as needed, and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be deemed an exercise of the United States' reserved water rights for consumptive use or a violation of its reserved water rights for natural flow.

ARTICLE III
IMPLEMENTATION

A. Basin Closure

1. In the following drainage basins upstream of the most downstream point on the Refuges for which a reserved water right is described by this Compact, the Department shall not process or grant an application for a permit to appropriate or to reserve water for consumptive use after the effective date of this Compact, provided that, the Department may issue certificates of water right for appropriation of groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet per year, and permits for stock watering ponds with a maximum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet per year from a source other than a perennial flowing stream:

Benton Lake National Wildlife Refuge:
Lake Creek Watershed including the unnamed tributaries of Benton Lake
Black Coulee National Wildlife Refuge:
Black Coulee Watershed

2. If a temporary or permanent basin closure is enacted under state law for a drainage basin or subbasin for which future consumptive water use is limited under this Compact, the most restrictive measures applicable to consumptive use of surface or groundwater shall control.

3. Within 180 days following the effective date of this Compact, the Department shall mail notice of the basin closure to every person or public agency of record with a claim of water right or permit in the source subject to closure.

B. Enforcement of Water Right

1. The United States, the state, or a holder of a water right recognized under state law, may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' reserved water right described by this Compact, and a holder of a water right recognized under state law. Resolution of the controversy shall be governed by the terms of this Compact where applicable, or to the extent not applicable, by applicable state or federal law.

2. The United States agrees that a water commissioner appointed by a state or federal court of competent jurisdiction, or other official authorized by future changes in law, may enter a refuge for which a water right is described in this Compact for the purpose of data collection, including the collection of information necessary for water distribution on or off the refuge, and to inspect structures for the diversion and measurement of water described in this Compact for consumptive use and for the measurement of natural flow. The terms of entry shall be as specified in an order of a state or federal court of competent jurisdiction.

3. The Department may enter a federal enclave for which a reserved water right is described in this Compact, at a reasonable hour of the day, for the purposes of data collection on water diversion and stream flow or inspection of devices maintained by the United States pursuant to this Compact. The Department shall notify the United States by certified mail or in person, at least 24 hours prior to entry.

4. The United States may request an investigation by the Department of a diversion located upstream of the reserved portion of a stream for which a reserved water right is described in this Compact. The Department may investigate. If an investigation occurs, the United States may accompany the Department.

5. The United States shall maintain structures, including wellhead equipment and casing, for the diversion and measurement of water authorized for consumptive use by this Compact.

The United States shall maintain the devices it deems necessary for enforcement of its reserved water right for natural flow described in this Compact.

6. A person who violates or refuses or neglects to comply with the provisions of this Compact, an order of the Department pursuant to this Compact, or an action by the Bureau pursuant to this Compact is subject to the penalties provided by state law.

C. Use of Water Right

The rights of the United States described in this agreement are federal reserved water rights. Non-use of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment of the right. The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the associated reserved land described in Article II, sections A.5. and B.5 and C.

D. Location of Natural Flow Rights

The United States' reserved water rights for natural flow apply to the portion of the streams specified in this Compact that flow over or form the boundary to land administered by the Fish and Wildlife Service.

E. Change in Use

1. Natural flow: Reserved water rights specified in this Compact for natural flow shall not be subject to change to any other use, provided that: the emergency use of water for fire suppression as provided for in Article II.C. shall not be deemed a change or alteration in use, or violation of a reserved water right for natural flow.

2. Consumptive uses: The United States may take action affecting the use of its consumptive use water rights provided that:

(1) the action shall be in fulfillment of the purposes of the refuge described in Article II, sections A.5;

(2) the total use shall not exceed the amount described in this Compact; and

(3) the action shall not adversely affect a water right that is recognized under state law.

3. Reporting by the United States: For any action affecting the use of a consumptive right whether or not such action is deemed a change in use, the United States agrees to provide the following information to the Department:

a. Well log: For a use that includes the drilling of a well or enlargement of an existing wellbore, the United States agrees to provide a well log to the state within 60 days of the completion of the well.

b. Emergency Use: Within 60 days after the commencement of a temporary emergency use for fire suppression described in Article II, Section C. of this Compact, the United States agrees to notify the state of the use to which the water was put, the dates of use, and the estimated amount of water used.

c. Annual Report: Between April 1 and May 1 of each year, the United States agrees to provide the Department with a report on:

(1) actions during the preceding year affecting the use of a consumptive use right described in this Compact;

(2) the initiation of new uses that were completed during the preceding year; and

(3) any data and documents generated or received by the Fish and Wildlife Service during the preceding year on measurement of stream flow on a stream with a natural flow water right set forth in this Compact.

4. Reporting by the State: Between December 1 and December 31 of each year, the Department shall provide the United States with a report of:

(1) changes in use during the preceding year, as defined by state law, of water rights upstream of or within the boundaries of reserved land for which a reserved water right is described in this Compact;

(2) any data and documents generated by the Department during the preceding year on the measurement of streamflows, diversions and well use on or tributary to a stream for which a water right for natural flow is described in this Compact;

(3) any certificate of water right issued during the preceding year for appropriation of groundwater; and

(4) any permit issued during the preceding year for a stock watering pond.

ARTICLE IV
GENERAL PROVISIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights

1. The relationship between the water rights of the Fish and Wildlife Service described herein and any rights to water of an Indian Tribe in Montana, or of any federally derived water right of an individual, or of the United States on behalf of such tribe or individual shall be determined by the rule of priority. The parties to this agreement recognize that the water rights described in this Compact are junior to any tribal water rights with a priority date before the effective date of the Compact, including aboriginal rights, if any, in the basins affected.

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the Fish and Wildlife Service.

3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water of any Indian Tribes and tribal members in Montana.

4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian Tribe regarding boundaries or property interests in the State of Montana.

B. State Water Rights

Nothing in this Compact may limit the exclusive authority of the state, including the authority of a water commissioner authorized by state law, to administer all current and future water rights recognized under state law within and upstream of the reserved land covered by this Compact, provided that in administration of those water rights in which the United States has an interest, such authority is limited to that granted under federal law.

C. Abstract

Concurrent with this Compact, the parties have prepared an Abstract, a copy of which is referenced as Appendix 1, which is a specific listing of all of the United States' water rights for Benton Lake and Black Coulee National Wildlife Refuges, that are described in this Compact and quantified in accordance with this Compact. The parties prepared the Abstract to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstract are subject to the terms of this Compact. In the event of a discrepancy between a right listed in the Abstract and that same right as quantified in accordance with Articles II and III of this Compact, the parties intend that the quantification in accordance with Articles II and III of this Compact shall be reflected in a final decree.

D. General Disclaimers

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State; or of the United States and any other state;

2. as a waiver by the United States of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact; or any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;

4. to establish a precedent for other agreements between the state and the United States or an Indian tribe;

5. to determine the relative rights, inter sese, of persons using water under the authority of state law or to limit the rights of the parties or a person to litigate an issue not resolved by this Compact;

6. to create or deny substantive rights through headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the effective date of this Compact;

8. to affect the right of the state to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or Act of Congress;

9. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with regard to the water rights of the Fish and Wildlife Service, and does not affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact;

10. to prevent the United States from constructing or modifying an outlet to an impoundment at a Refuge in compliance with all applicable law;

11. to prevent the United States from seeking a permit to appropriate water under state law from a source not closed to new permits by this Compact or any other law.

E. Reservation of Rights

The parties expressly reserve all rights not granted, described or relinquished in this Compact.

F. Severability

The provisions of this Compact are not severable, provided that for the purposes of Sec. 85-2-702(3), MCA, the water rights described in this Compact for each Fish and Wildlife Service Refuge shall be considered as separate Compacts.

G. Multiple Originals

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

H. Notice

Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as he or she may designate in writing.

2. United States: Upon the Secretary of the Interior and such other officials as he or she may designate in writing.

ARTICLE V
FINALITY OF COMPACT AND DISMISSAL OF PENDING CASES

A. Binding Effect

1. The effective date of this Compact is the date of the ratification of this Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on:

a. The State and a person or entity of any nature whatsoever using, claiming or in any manner asserting a right under the authority of the State to the use of water; and

b. Except as otherwise provided in Article IV, section A., the United States, a person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.

2. Following the effective date, this Compact shall not be modified without the consent of both parties. Either party may seek enforcement of this Compact in a court of competent jurisdiction. Attempt to unilaterally modify this Compact by either party shall render this Compact voidable at the election of the other party.

3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all persons bound by the final order of the court.

4. If an objection to this Compact is sustained pursuant to 85-2-702(3), MCA, this Compact shall be voidable by action of and without prejudice to either party.

B. Disposition of Actions

Subject to the following stipulations and within one hundred eighty (180) days of the effective date, the parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. § 666, for approval in accordance with state law and for the incorporation of the reserved water rights described in this Compact into a decree or decrees entered therein. The parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. § 666 or other provision of federal law.

1. Dismissal of Filed Claims: At the time the state courts approve the reserved water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all of the water right claims specified in Appendix 2 for Benton Lake National Wildlife Refuge and Appendix 3 for Black Coulee National Wildlife Refuge to this Compact. If this Compact fails approval or a reserved water right described herein is not confirmed, the specified claims shall not be dismissed.

2. Disposition of Federal Suits: Within ninety (90) days of the issuance of a final decree or decrees by the state courts approving this Compact and confirming the reserved water rights described herein, and the completion of any direct appeals therefrom or the expiration of the time for filing such appeal, the parties shall execute and file joint motions pursuant to Rule 41(a) Fed. R. Civ. P. to dismiss with prejudice any claims made by the United States for the Fish and Wildlife Service Refuges described in this Compact in federal court. This Compact may be filed as a consent decree in those federal suits, only if, prior to the dismissal of the federal suits as provided in this Article, it is finally determined in a judgement binding on the State of Montana that the state courts lack jurisdiction over some or all of the reserved water rights described in this Compact. Within one year of such judgment the United States agrees to commence such additional proceedings in the federal district court for the District of Montana as may be necessary to judicially confirm the reserved water rights described herein which are not included within an existing action.

3. Continuation of Negotiations: The parties were unable to finalize agreement on quantification of the water rights for: Red Rocks National Wildlife Refuge and Wilderness Area; the National Bison Range; Bowdoin National Wildlife Area; and Charles M. Russell and UL Bend National Wildlife Refuges and UL Bend Wilderness Area, prior to the effective date of this Compact. The parties agree to continue to pursue, in good faith, quantification of water rights for these areas. In the event the parties are unable to agree on quantification, the United States retains its right to have the quantity of any reserved water right for these areas adjudicated in a state or federal court of competent jurisdiction.

C. Settlement of Claims

The parties intend that the water rights described in this Compact are in full and final settlement of the water right claims for the reserved land described in this Compact and administered by the Fish and Wildlife Service in Montana on the effective date of this Compact. Pursuant to this settlement, the United States hereby and in full settlement of any and all claims filed by the United States or which could have been filed by the United States for Black Coulee and Benton Lake National Wildlife Refuges, relinquishes forever on the effective date of this Compact all said claims to water within the State of Montana for Black Coulee and Benton Lake National Wildlife Refuges. The state agrees to recognize the reserved water rights described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the state.

D. The parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the 17th day of July, 1997.

History: En. Sec. 1, Ch. 137, L. 1997.

Part 8
United States Fish and Wildlife Service, Red Rock Lakes-Montana Compact

85-20-801. United States Fish and Wildlife Service, Red Rock Lakes-Montana compact ratified. The compact entered into by the State of Montana and the United States Fish and Wildlife Service and filed with the secretary of state of the State of Montana under the provisions of 85-2-702 on April 20, 1999, is ratified. The compact is as follows:

WATER RIGHTS COMPACT
STATE OF MONTANA
UNITED STATES OF AMERICA, FISH AND WILDLIFE SERVICE

This Compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims existing on the effective date of the Compact to water for Red Rock Lakes National Wildlife Refuge and Wilderness Area ("Refuge") administered by the U.S. Fish and Wildlife Service (FWS) within the State of Montana.

RECITALS

WHEREAS, the State of Montana, in 1979, pursuant to Title 85, Chapter 2 of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, 85-2-703, MCA, provides that the state may negotiate compacts concerning the equitable division and apportionment of water between the state and its people and the federal government with claims to non-Indian reserved water rights within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of Red Rock Lakes National Wildlife Refuge and Wilderness Area, in the State of Montana;

WHEREAS, the United States, in quantifying its water rights recognizes the need to accommodate the interests of the State and its citizens by providing for the development and use of water in the vicinity of the Fish and Wildlife Service Refuges to the extent that it is possible to do so without materially affecting the rights and interests of the United States;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§516-17 (1968);

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of Interior pursuant to 43 U.S.C. §1457 (1986, Supp. 1992);

NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE I - DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

1. "Abstract" means the copy of the document entitled "Abstract of U.S. Fish and Wildlife Service Water Rights" referenced in this Compact as Appendix 1.

2. "Consumptive" when referring to a water right recognized under state law means a use of water which removes water from the source of supply such that the quality or quantity is reduced or the timing of return delayed, making it unusable or unavailable for use by others, and includes evaporative loss from impoundments or natural lakes.

3. "Department" means the Montana Department of Natural Resources and Conservation or its successor.

4. "Developed spring" means any diversion from a spring for beneficial use under state law and does not require augmentation of flow.

5. "Effective date of this Compact" means the date of the ratification of the Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever is latest.

6. "Groundwater" means water that is beneath the ground surface.

7. "Minimum flow" means the flow of water in a stream measured in cubic feet per second at the point designated in Article II of the Compact, at or below which the United States has the right to seek curtailment of junior water rights upstream from the Refuge.

8. "Natural flow" means the water that the parties agree shall remain in the stream in satisfaction of the United States' water right for the purposes of the federal reservation.

9. "Non-consumptive" see "consumptive"

10. "Parties" means the State of Montana and the United States.

11. "Person" means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

12. "Recognized under state law" when referring to a water right or use means a water right or use protected by state law, but does not include state recognition of a federal or tribal reserved water right arising under federal law.

13. "Red Rock Lakes National Wildlife Refuge" means those lands located in Montana that were withdrawn and reserved by Executive Orders No. 7023 of April 22, 1935, and 7172 of September 4, 1935, and all lands acquired by the United States Fish and Wildlife Service within the boundaries established by Executive Orders 7023 and 7172.

14. "Red Rock Lakes Wilderness Area" means those lands within Red Rock Lakes National Wildlife Refuge designated as wilderness by Public Law 94-557 of October 19, 1976, 16 USC 1132.

15. "Refuge" means both the Red Rock Lakes National Wildlife Refuge and the Red Rock Lakes Wilderness Area.

16. "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "state" means the Director of the Montana Department of Natural Resources and Conservation or his or her designee.

17. "United States" means the federal government and all officers, agencies, departments and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of the Interior, or his or her designees.

ARTICLE II - WATER RIGHT

The parties agree that the following water rights are in settlement of all of the United States' water rights for the Refuge, including federal reserved and state-based water rights acquired with the purchase of land. The parties to this agreement recognize that the water rights described in this Compact are junior to any tribal water rights with a priority date before the effective date of the Compact, including aboriginal rights, if any, in the basins affected. All water rights described in this Article are subject to Article IV.A. of this Compact.

A. **Quantification:** The United States shall have the right to water from the following sources where they occur on the Refuge:

1. **Consumptive Use:**

Red Rock Lakes National Wildlife Refuge — Consumptive Use

	Legal Description of impoundment or POD				Elev. of Dam	Surface Acres	Acre-Feet Capacity	Future Acre-Feet	Natural or Manmade	Canal	Diversion Rate	Source of Diverted Water
	Qtr	Sec.	Twnshp	Range							CFS	
McDonald Pond	NW	6	14 S	1 E	**6629.63**	**14**	**44**		NWS	Mallard	10	Culver Springs
Widgeon Pond	NW	6	14 S	1 E	**6636.3**	**150**	**585**		NWS	Hacket Cr	20	Culver Springs
Culver Pond	NW	8	14 S	1 E	**6651.7**	**65**	**110**		NWS			Culver Springs
East Pintail Ditch Pnd	N2	1	14 S	1 W		3	3		M	Mallard	10	Culver Springs Groundwater
Pintail Ditch Pond	SW	34	13 S	1 W		21	24		M	Mallard	10	Culver Springs Groundwater
Swan Lake[3]	N2	9	14 S	1 W		649	1168		N			Elk Creek Groundwater
Buck Pond[2]	NE	4	14 S	1 W		11	16		N			Groundwater
East Swan Lake[1]	SW	3	14 S	1 W		65	78		N			Groundwater
Sora Pond[2]	E2	33	13 S	1 W		1	2		N			Groundwater
Antelope Pond	N2	4	14 S	1 W		10	12		N			Groundwater
Campground Spring	SWSWSE	21	14 S	1 W			8		M		10 gpm	Groundwater
Shambow Pond[4]	S2	20	14 S	1 W		7	26		N			Groundwater
Rail Pond[2]	NW	3	14 S	1 W		6	9		N			Groundwater
Well	SESESE	28	13 S	1 W					M		40 gpm	Groundwater
Well	SESESE	28	13 S	1 W					M		15 gpm	Groundwater
Well	SWSESE	28	13 S	1 W					M		15 gpm	Groundwater
Well	NWSWNW	28	13 S	1 W					M		3 gpm	Groundwater
Well	NESESE	28	13 S	1 W					M		20 gpm	Groundwater
Irrigation	SWSW	30	14 S	1 W				3000	M		25	Odell Creek
Sparrow Slough Pond	N2	13	14 S	2 W	**6627**	**63**	**190**		M			Odell Creek
Sparrow Pond	SW	13	14 S	2 W	**6629.3**	**21**	**34**		NWS	ditch	17.5	Odell Creek
Upper Red Rock Lake	W2	8	14 S	1 W		3467			N			Red Rock Creek
Lower Red Rock Lake	NE	6	14 S	2 W	**6612.5**	**5492**	**89582**		NWS			Red Rock Creek
Tuck Slough South	SE	7	14 S	1 W		29	63		M	Harlequin	30	Red Rock Creek

Tuck Slough North	N2	7	14 S	1 W	103	200		M	Harlequin	30	Red Rock Creek
Shoveler Pond[2]	W2	7	14 S	1 W	6	9		N	Harlequin	30	Red Rock Creek Groundwater
Refuge HQ domestic Well	SESENW	23	14 S	2 W		8	8	M			Groundwater
Irr. of Refuge HQ grnds	SWNESW	23	14 S	2 W				M	pipeline	0.5	Shambow Creek
Irr. of Bunkhse grnds	SWNESW	23	14 S	2 W				M	pipeline	0.2	Shambow Creek
Irr. of Bunkhouse Pasture	SWSWNE	23	14 S	2 W				M	ditch	1.6	Shambow Creek

Bold letters denote data taken from the dam safety reports, all other data is derived from topographic maps and Refuge staff estimates.

POD = Point of Diversion N = Natural lake NWS = Natural lake with manmade structure M = Manmade lake

1 = Estimated average depth 2 feet 3 = Estimated average depth 3 feet
2 = Estimated average depth 2.5 feet 4 = Estimated average depth 6 feet

2. **Natural Flow:** The United States has a water right to the natural flow in all the tributaries entering the Refuge above the most downstream point on the Refuge at the point the tributary enters the Refuge in the amount of the natural flow remaining after satisfaction of the following water rights:

a. all rights recognized under state law upstream from the Refuge with a priority date prior to the effective date of this Compact; and

b. any rights exempt from the basin closure set forth in Article III.A. of this Compact.

3. **Minimum Flow:** Subject to the provisions of Article III.C.1., the United States has a water right for minimum flows on Red Rock, Tom and Odell Creeks as follows:

a. Red Rock Creek: 15 cfs, measured at NE SE NW Sec. 17, T14S, R1E;

b. Tom Creek: 1.4 cfs, measured at the county road in SW NE NE Sec. 25, T14S, R1W;

c. Odell Creek: 11 cfs, measured at the county road in SW SW SE Sec. 24, T14S, R2W.

4. **Lake Level:** The United States has the right to maintain the natural lake level of Lower Red Rocks Lake at an elevation of 6607.5 feet. The United States may store additional water only to the extent consistent with the Memorandum of Understanding of February 4, 1987, between the United States and the Water Users Irrigation Company (Lima Reservoir) and East Bench Irrigation District and state water right permit number 65254-S41A.

5. **Emergency Fire Suppression:** The use of water for emergency fire suppression benefits the public, and is necessary for the purposes of the Refuge. The United States may, as part of its water right, divert water for fire suppression at the Refuge as needed and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be considered an exercise of the United States' water rights for consumptive use or a violation of its water rights for natural or minimum flow.

B. **Relative Priority:**

1. **Priority Date:**

a. Consumptive Use and Natural Flow: Subject to the subordination provisions of Article II.B.2.a., the United States has a priority date of April 22, 1935, for the water rights for consumptive use and natural flow described in Article II.A.1. and 2. of this Compact.

b. Minimum Flow: Subject to the provisions of Article III.C.1. setting forth the means to satisfy the minimum flow rights for the Refuge and the subordination provisions of Article II.B.2.b., the United States has a priority date of October 30, 1888, for the 15 cfs minimum flow on Red Rock Creek; June 15, 1894, for the 1.4 cfs minimum flow on Tom Creek; and June 28, 1889, for the 11 cfs minimum flow on Odell Creek.

2. **Subordination:**

a. Consumptive Use Natural Flow and Lake Levels: The water rights for consumptive use set forth in Article II.A.1. and natural flow set forth in Article II.A.2. and lake levels set forth in Article II.A.4. are subordinate to the following rights upstream from the most downstream point on the Refuge:

(1) any right recognized under state law with a priority date before the effective date of this Compact; and

(2) any right exempt from the basin closure set forth in Article III.A. of this Compact.

b. Minimum Flow: The water rights for minimum flows on Red Rock, Tom and Odell Creeks set forth in Article II.A.3. of this Compact are subordinate to the following rights upstream from the Refuge:

(1) any right for the purpose of domestic use;

(2) any right for the purpose of instream stockwatering; and

(3) any change in use of a water right for the purpose of instream stockwatering to off-stream stockwatering that does not result in an increase in the historic consumptive use of water.

C. **Period of Use:**

1. **Natural Flow/Consumptive Use:** The period of use of the United States' water rights for natural flow and consumptive use set forth in Article II.A.1. and 2. shall be from January 1 through December 31 of each year.

2. **Minimum Flow:** The period of use of the United States' water rights for minimum flows set forth in Article II.A.3. shall be from April 1 through November 30 of each year.

D. **Points and Means of Diversion/Location of Natural and Minimum Flow Rights:**

1. **Consumptive Use:** See Table at Article II.A.1.

2. **Natural Flow:** The United States' water rights for natural flow apply to the portion of the streams specified in this Compact that flow over or form the boundary of land administered by the Fish and Wildlife Service.

3. **Minimum Flow:** The United States' water rights for minimum flow are measured at the points set forth in Article II.A.3.

E. **Purposes:** The United States' rights to water may be used for the following purposes:

1. **Consumptive Use:** The United States' water rights for consumptive use shall be used for the purposes of the Refuge including wildlife habitat maintenance and enhancement. Subject to the limitations set forth in Article III.E., the United States may change the use of water identified for consumptive use in Article II.A.1.

2. **Natural and Minimum Flows:** The United States' water rights to natural and minimum flows shall be used on the Refuge for wildlife habitat maintenance and enhancement. The United States' water rights to natural flow set forth in Article II.A.2. and to minimum flows set forth in Article II.A.3. shall be used only for the purpose of instream flow and shall not be changed or diverted for any other use, except for fire suppression as set forth in Article II.A.5.

ARTICLE III - IMPLEMENTATION

A. **Basin Closure:**

1. In the drainage basins upstream of the most downstream point on the Refuge, the Department shall not process or grant an application for a permit to appropriate or to reserve water for consumptive use after the effective date of this Compact, provided that, the following appropriations are exempt from this closure:

a. certificates of water right for appropriation of groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet per year;

b. permits for appropriation of groundwater by means of a well or developed spring with an appropriation of greater than 35 gallons per minute or a total appropriation in excess of 10 acre-feet per year, if the Department determines by a preponderance of the evidence based on information provided by the applicant or information from any other source available to the Department that the groundwater is not hydrologically connected to surface water upstream from or on the Refuge;

c. permits or changes in water right for appropriation of groundwater for irrigation purposes when the number of acres to be irrigated from groundwater under the permit or change in water right will be accompanied by a corresponding decrease in the number of acres irrigated from surface water sources upstream from the Refuge;

d. permits for stock watering ponds with a maximum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet per year from a source other than a perennial flowing stream;

e. permits for domestic use;

f. permits for nonconsumptive use; and

g. temporary emergency appropriations.

2. If a temporary or permanent basin closure is enacted under state law for a drainage basin or subbasin for which future consumptive water use is limited under this Compact, the most restrictive measures applicable to consumptive use of surface or groundwater shall control.

3. Within 180 days following the effective date of this Compact, the Department shall mail notice of the basin closure to every person or public agency of record with a claim of water right or permit in the portion of the drainage basins subject to closure.

B. **Lake Levels:** The United States agrees to continue efforts to coordinate lake water level management with Water Users Irrigation Company (Lima Reservoir) and East Bench Irrigation District or their successors in interest. It is not intended that this Compact affect in any way the Memorandum of Understanding between the United States and the Irrigation Company and Irrigation District listed above, or the ability of the parties to modify that agreement.

C. **Enforcement of Water Right:**

1. **Minimum flow:**

a. Minimum flow rights set forth in Article II.A.3. may be satisfied through cooperative agreements entered into by the FWS and any person holding a water right with a point of diversion on Red Rock, Tom or Odell Creeks or their tributaries upstream of the Refuge. The FWS may, on agreement with the parties to a cooperative agreement, modify an existing agreement. The FWS may enter into additional cooperative agreements after the effective date of the Compact. Modification of a cooperative agreement or entry into a new cooperative agreement shall not be considered a modification of the Compact. As between the FWS and signatories to cooperative agreements, the FWS will use its best efforts to seek satisfaction of the minimum flow rights pursuant to the cooperative agreements prior to resorting to remedies set forth in Article III.C.2.

b. Prior to seeking satisfaction of the minimum flow, the FWS shall cease its own diversions, if any, from:

(1) Red Rock Creek and its tributaries upstream from the point of measurement when measured flow is approximately 25 cfs;

(2) Odell Creek and its tributaries upstream from the point of measurement when measured flow is approximately 20 cfs; and

(3) Tom Creek and its tributaries upstream from the point of measurement when measured flow is approximately 5 cfs.

c. On acquisition by or transfer to the FWS of any water right subject to a cooperative agreement, the FWS will continue to exercise the water right in a manner that satisfies the minimum flow at least to the degree set forth in the cooperative agreement, and the provisions of Article III.C.1.b. requiring curtailment of FWS diversions shall apply.

d. In the absence of a cooperative agreement, the FWS may seek curtailment of a water use to satisfy the minimum flow by resort to a court of competent jurisdiction pursuant to Article III.C.2. In any proceeding before a court of competent jurisdiction, the FWS will not seek curtailment of any water right which, based on the experience and observation of the FWS, does not cause a measured or cumulative reduction in flow of Red Rock, Tom, or Odell Creeks at the point of measurement set forth in Article II.A.3., and will limit the period for which curtailment is sought to that necessary to maintain the minimum flow.

2. The United States, the State, or a holder of a water right recognized under state law, may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' reserved water rights described by this Compact, and a holder of a water right recognized under state law. Resolution of the controversy shall be governed by the terms of this Compact where applicable or, to the extent not applicable, by appropriate state or federal law.

3. The United States agrees that a water commissioner appointed by a state or federal court of competent jurisdiction, or other official authorized by future changes in law, may enter the Refuge for the purpose of data collection, including the collection of information necessary for water distribution on or off the Refuge, and to inspect structures for the diversion and measurement of water described in this Compact for consumptive use and for the measurement of natural and minimum flow. The terms of entry shall be as specified in an order of a state or federal court of competent jurisdiction.

4. The Department may enter the Refuge, at a reasonable hour of the day, for the purposes of data collection on water diversion and stream flow or inspection of devices maintained by

the United States pursuant to this Compact. The Department shall notify the United States by certified mail or in person, at least 24 hours prior to entry.

5. The United States may request an investigation by the Department of a diversion located upstream of the portion of a stream for which a water right is described in this Compact. The Department may investigate. If an investigation occurs, the United States may accompany the Department.

6. The United States shall maintain structures, including wellhead equipment and casing, for the diversion and measurement of water authorized for consumptive use by this Compact. The United States shall maintain the devices it considers necessary for enforcement of its reserved water right for natural and minimum flow described in this Compact.

7. A person who violates or refuses or neglects to comply with the provisions of this Compact or an order of the Department pursuant to this Compact is subject to the penalties provided by state law.

D. **Use of Water Right:** The rights of the United States described in this agreement are federal water rights. Non-use of all or a part of the federal water rights described in this Compact shall not constitute abandonment or forfeiture of those rights. The federal water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the Refuge.

E. **Change in Use:**

1. **Natural and Minimum Flow:** Water rights specified in this Compact for natural and minimum flow shall not be subject to change to any other use, provided that: the emergency use of water for fire suppression as provided for in Article II.A.5. shall not be considered a change or alteration in use, or violation of a water right for natural or minimum flow.

2. **Consumptive Uses:**

a. The United States may make a change in the use of its consumptive use water rights, provided that:

(1) the action shall be in fulfillment of the purposes of the Refuge described in Article II.E. rather than with reference to a beneficial use as defined by state law;

(2) the total use shall not exceed the amount described in this Compact; and

(3) the action shall not adversely affect a water right that is recognized under state law.

b. With the exception of the purpose for which the water right is used, the United States, in making the change, shall comply with the provisions of Title 85, Chapter 2, Montana Code Annotated, applicable to change in appropriative right at the time of the change. The United States may appeal any decision by the Department to a state or federal court of competent jurisdiction.

ARTICLE IV - GENERAL PROVISIONS

A. **No Effect on Tribal Rights or Other Federal Reserved Water Rights:**

1. The relationship between the water rights of the United States described herein and any rights to water of an Indian Tribe, or of any federally derived water right of an individual, or of the United States on behalf of such tribe or individual shall be determined by the rule of priority. The parties to this agreement recognize that the water rights described in this Compact are junior to any tribal water rights with a priority date before the effective date of the Compact, including aboriginal rights, if any, in the basins affected.

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the Fish and Wildlife Service at the Refuge.

3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water of any Indian Tribes and tribal members.

4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian Tribe regarding boundaries or property interests.

B. **State Water Rights:** Nothing in this Compact limits the exclusive authority of the State, including the authority of a water commissioner authorized by state law, to administer all current and future water rights recognized under state law within and upstream of the

Refuge, provided that in administration of those water rights in which the United States has an interest, such authority is limited to that not in conflict with federal law.

C. **Abstract:** Concurrent with this Compact, the parties have prepared an Abstract, a copy of which is referenced as Appendix 1, which is a specific listing of all of the United States' water rights for the Refuge, that are described in this Compact and quantified in accordance with this Compact. The parties prepared the Abstract to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstract are subject to the terms of this Compact. In the event of a discrepancy between a right listed in the Abstract and that same right as quantified in accordance with Articles II and III of this Compact, the parties intend that the quantification in accordance with Articles II and III of this Compact shall govern and shall be reflected in a final decree.

D. **General Disclaimers:** Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State; or of the United States and any other state;

2. except as agreed to in cooperative agreements authorized by Article III.C.1. of this Compact, as a waiver by the United States on behalf of the FWS of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact; or any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;

4. to establish a precedent for other agreements between the State and the United States or an Indian tribe;

5. to determine the relative rights, *inter sese*, of persons using water under the authority of state law or to limit the rights of the parties or a person to litigate an issue not resolved by this Compact;

6. to create or deny substantive rights through headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the effective date of this Compact;

8. to affect the right of the State to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or Act of Congress;

9. to affect in any manner the entitlement to or quantification of other federal water rights;

10. to be binding on the United States with regard to the water rights of the United States for any area other than the Refuge;

11. to affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact;

12. to prevent the United States from constructing or modifying an outlet to an impoundment at the Refuge in compliance with all applicable laws;

13. to prevent the United States from seeking a permit to appropriate water under state law from a source not closed to new permits by this Compact or any other law.

E. **Reservation of Rights:** The parties expressly reserve all rights not granted, described or relinquished in this Compact.

F. **Severability:** The provisions of this Compact are not severable.

G. **Multiple Originals:** This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

H. **Notice:** Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. **State:** Upon the Director of the Department and such other officials as he or she may designate in writing.

2. **United States:** Upon the Secretary of the Interior and such other officials as he or she may designate in writing.

ARTICLE V - FINALITY OF COMPACT

A. **Binding Effect:**

1. The effective date of this Compact is the date of the ratification of this Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on the parties.

2. Following the effective date, this Compact shall not be modified without the consent of both parties. Either party may seek enforcement of this Compact in a court of competent jurisdiction. Any attempt unilaterally to modify this Compact by either party shall render this Compact voidable at the election of the other party.

3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all persons bound by the final order of the court.

4. If an objection to this Compact is sustained pursuant to 85-2-702(3), MCA, this Compact shall be voidable by action of and without prejudice to either party.

B. **Disposition of Actions:** Subject to the following stipulations and within one hundred eighty (180) days of the effective date of this Compact, the parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. 666, for approval in accordance with state law and for the incorporation of the water rights described in this Compact into a decree or decrees entered therein. The parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

1. **Dismissal of Filed Claims:** At the time the state courts approve the water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all of the water right claims specified in Appendix 2 to this Compact. If this Compact is not approved or a water right described herein is not confirmed, the specified claims shall not be dismissed.

2. **Federal Court:** This Compact may be filed as a consent decree in federal court only if it is finally determined in a judgment binding on the State of Montana that the state courts lack jurisdiction over some or all of the water rights described in this Compact. Within one year of such judgment the United States agrees to commence such additional proceedings in the federal district court for the District of Montana as may be necessary to judicially confirm the water rights described herein.

3. **Continuation of Negotiations:** The parties were unable to finalize agreement on quantification of the water rights for: the National Bison Range; Bowdoin National Wildlife Refuge; and Charles M. Russell and UL Bend National Wildlife Refuges and UL Bend Wilderness Area, prior to the effective date of this Compact. The parties agree to continue to pursue, in good faith, quantification of water rights for these areas. In the event the parties are unable to agree on quantification, the United States retains its right to have the quantity of any reserved water rights for these areas adjudicated in a state or federal court of competent jurisdiction.

C. **Settlement of Claims:** The parties intend that the water rights described in this Compact are in full and final settlement of the water right claims for the Refuge land described in this Compact and administered by the Fish and Wildlife Service in Montana on the effective date of this Compact. On the effective date of this Compact, the United States hereby and in full settlement of any and all claims to water filed by the United States or which could have been filed by the United States for Red Rock Lakes National Wildlife Refuge and Wilderness Area, relinquishes forever all said claims to water within the State of Montana for Red Rock Lakes National Wildlife Refuge and Wilderness Area. The state agrees to recognize the water rights described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the state.

D. The parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the 1st day of February, 2000.

History: En. Sec. 1, Ch. 347, L. 1999; amd. Sec. 1, Ch. 187, L. 2001.

Part 9
Crow Tribe-Montana Compact

85-20-901. Crow Tribe-Montana compact ratified. The compact entered into by the State of Montana and the Crow Tribe and filed with the Secretary of State of the State of Montana under the provisions of 85-2-702 on June 22, 1999, is ratified. The compact is as follows:

WATER RIGHTS COMPACT ENTERED INTO BY
THE STATE OF MONTANA,
THE CROW TRIBE,
AND THE UNITED STATES OF AMERICA

This Compact is entered into by and among the State of Montana, the Crow Tribe, and the United States of America for the purpose of settling any and all existing water rights claims of or on behalf of the Crow Tribe of Indians in the State of Montana.

ARTICLE I - RECITALS

WHEREAS, in 1975, the United States, on behalf of the Crow Tribe, brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribe's water rights, see, U.S. v. Big Horn Low Line Canal Company, et al., No. CIV-75-34-BLG (filed April 17, 1975); and

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America in trust for the Tribe; see, "the McCarran Amendment", 43 U.S.C. 666(a)(1)(1952); Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983); and

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes Crow tribal water rights; and

WHEREAS, the United States has filed claims on behalf of the Crow Tribe in the general stream adjudication initiated by the State of Montana; and

WHEREAS, the lands and waters constituting the Crow Indian Reservation and Tribal Interests in the Ceded Strip were part of the area recognized as the territory of the Crow Indians under the Treaty of Fort Laramie of September 17, 1851 and also were part of the area set apart for the Crow Tribe under the Treaty of Fort Laramie of May 7, 1868; and

WHEREAS, for the purposes of this Compact, the priority date for the Tribal Water recognized is May 7, 1868, which is the senior water right on the water sources covered by this Compact; and

WHEREAS, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negotiate settlement of water rights claims filed by Indian tribes or on their behalf by the United States claiming reserved waters within the State of Montana; and

WHEREAS, the federal district court litigation was stayed in 1983 pending the outcome of Montana State court water adjudication proceedings, see, Northern Cheyenne Tribe v. Adsit, 721 F.2d 1187, 1189 (9th Cir. 1983); and

WHEREAS, the adjudication of Crow tribal water rights in the state court proceedings has been suspended while negotiations are proceeding to conclude a compact resolving all water rights claims of the Crow Tribe within the State of Montana; and

WHEREAS, the Crow Tribal Council, or its duly designated representatives, have authority to negotiate this Compact pursuant to Resolution No. 99-33; and

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. Sections 516-17 (1993); and

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. Section 1457 (1986, Supp. 1992), inter alia; and

WHEREAS, the Crow Tribe, the State of Montana, and the United States agree that the Tribal Water Right described in this Compact shall be in satisfaction of all the Tribe's water rights claims within the State of Montana; and

WHEREAS, it is in the best interest of all Parties that the water rights claims of the Crow Tribe be settled through agreement between and among the Tribe, the State of Montana, and the United States; and

WHEREAS, in settling the water rights claims of the Crow Tribe the Parties do not intend to alter or amend or to adopt or preclude any interpretation of the Yellowstone River Compact (Act of October 10, 1951, ch. 629, 65 Stat.663 (1951));

NOW THEREFORE, the Parties agree to enter into this Compact for the purpose of settling the water rights claims of the Crow Tribe within the State of Montana.

ARTICLE II - DEFINITIONS

The following definitions shall apply for purposes of this Compact:

1. "Acre-foot" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet.

2. "Acre Feet Per Year" or "AFY" means the quantity of water to which the Tribe has a right each year measured in acre feet over a period of a year.

3. "Adverse Affect" or "Adversely Affect" means interference with or to interfere with the reasonable exercise of a water right.

4. "Bighorn River Basin" means Water Court Basin 43P, the mainstem of the Bighorn River and its tributaries (exclusive of the Little Bighorn River and its tributaries) within Montana to its confluence with the Yellowstone River, as depicted on the map attached as Appendix 2.

5. "Bighorn Lake" means the body of water impounded on the Bighorn River by Yellowtail Dam, Yellowtail Unit, Lower Bighorn Division, Pick-Sloan Missouri Program, Montana.

6. "Board" means the Crow - Montana Compact Board established by Section F, of Article IV of this Compact.

7. "Ceded Strip" means the area covered by Article III of the Act of April 27, 1904 (33 Stat. 352), as depicted on the map attached as Appendix 5.

8. "Change in Use" as applied to the Tribal Water Right, means a change in the point of diversion, the place of use, the purpose of use, or the place or the means of storage.

9. "Clarks Fork Yellowstone River Basin" means Water Court Basin 43D, the mainstem of the Clarks Fork Yellowstone River and its tributaries from the Montana-Wyoming border to its confluence with the Yellowstone River, as depicted on the map attached as Appendix 2.

10. "Crow Irrigation Project" means the irrigation project authorized by the Act of March 3, 1891 (26 Stat. 989, 1040) managed by the United States, Department of the Interior, Bureau of Indian Affairs, as of the date this Compact has been ratified by the Montana legislature, consisting of the following project units: Agency, Big Horn, Forty Mile, Lodge Grass 1, Lodge Grass 2, Pryor, Reno, Soap Creek, and Upper Little Horn; and including land held in trust by the United States for the Tribe or a Tribal member within the Bozeman Trail and Two Leggins districts which are managed by private irrigation associations as of the date this Compact has been ratified by the Montana legislature.

11. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.

12. "Effective Date" means the date on which the Compact is ratified by the Crow Tribal Council, by the Montana legislature, and by the Congress of the United States, whichever date is latest.

13. "Groundwater" means any water that is beneath the ground surface.

14. "Little Bighorn River Basin" means Water Court Basin 43O, the mainstem of the Little Bighorn River and its tributaries from the Montana-Wyoming border to its confluence with the Bighorn River, as depicted on the map attached as Appendix 2.

15. "Natural Flow" means water that would exist in the Bighorn River and its tributaries in the absence of human intervention.

16. "Parties" means the Tribe, the State, and the United States.

17. "Person" means an individual or any other entity, public or private, including the State, the Tribe, and the United States and all officers, agents, and departments of each of the above.

18. "Pryor Creek Basin" means Water Court Basin 43E, the mainstem of Pryor Creek and its tributaries from its headwaters to its confluence with the Yellowstone River, as depicted on the map attached as Appendix 2.

19. "Recognized Under State Law" when referring to a water right, means a water right arising under Montana law or a water right held by a nonmember of the Tribe on land not held in trust by the United States for the Tribe or a Tribal member.

20. "Release" means to discharge water from storage, or the discharge of water from storage.

21. "Reservation" means the Crow Indian Reservation consisting of the area as presently set apart for the Crow Tribe pursuant to the following Treaty and laws: Article 2 of the Fort Laramie Treaty of May 7, 1868 (15 Stat. 649); the Act of April 11, 1882 (22 Stat. 42); the Act of March 3, 1891 (26 Stat. 989); the Act of April 27, 1904 (33 Stat. 352); the Act of August 31, 1937 (50 Stat. 884); and, the Act of November 2, 1994 (108 Stat. 4636), as depicted on the map attached as Appendix 4.

22. "Rosebud Creek Basin" means Water Court Basin 42A, the mainstem of Rosebud Creek and its tributaries from its headwaters to its confluence with the Yellowstone River, as depicted on the map attached as Appendix 2.

23. "Secretary" means the Secretary of the United States Department of the Interior, or his or her duly authorized representative.

24. "Shoshone River Basin" means Water Court Basin 43N, the mainstem of the Shoshone River and its tributaries within Montana, as depicted on the map attached as Appendix 2.

25. "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof.

26. "Tongue River Basin" means Water Court Basin 42B, the mainstem of the Tongue River and its tributaries from the Montana-Wyoming border to above and including Hanging Woman Creek, as depicted on the map attached as Appendix 2.

27. "Transfer" as applied to the Tribal Water Right, means to authorize a person to use all or any part of the Tribal Water Right through a service contract, lease, or other similar agreement of limited duration.

28. "Tribal Water Resources Department" or "TWRD" means the Crow Tribal Water Resources Department, or any successor agency.

29. "Tribal Interests in the Ceded Strip" means all present and acquired interests in real property, including mineral interests, held in trust by the United States for the Tribe or Tribal members within the Ceded Strip, consisting of: Crow Indian allotments held in trust by the United States for the Tribe or Tribal members; interests restored to the Tribe pursuant to the Act of May 19, 1958 (72 Stat. 121), as modified by the Act of August 14, 1958 (72 Stat. 575); and other interests held in trust by the United States for the Tribe or Tribal members.

30. "Tribal Water Right" means the right of the Crow Tribe, including any Tribal member, to divert, use, or store water as described in Article III of this Compact.

31. "Tribe" means the Crow Tribe and all officers, agents, and departments thereof.

32. "United States" means the federal government and all officers, agencies, and departments thereof.

33. "Yellowstone River Basin between Bighorn River and Tongue River" means Water Court Basin 42KJ, the mainstem of the Yellowstone River and its tributaries between Bighorn River and Tongue River, as depicted on the map attached as Appendix 2.

34. "Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River" means Water Court Basin 43Q, the mainstem of the Yellowstone River and its tributaries between Clarks Fork Yellowstone River and Bighorn River, as depicted on the map attached as Appendix 2.

ARTICLE III - TRIBAL WATER RIGHT

A. Basin 43P: Bighorn River.

1. Quantification - Source - Volume.

a. Natural Flow. The Tribe has a quantified water right to the Natural Flow of the Bighorn River for current uses developed as of the date this Compact has been ratified by the Montana legislature and new development within the Reservation of 500,000 AFY. The use of this right is subject to Sections A.6. and A.8.a., of Article III, and the terms and conditions of the streamflow and lake level management plan agreed to in accordance with Section A.7., of Article III.

(1). The Tribe has a right to divert or use or to authorize the diversion or use of water from the Natural Flow of the Bighorn River within the Reservation, subject to the terms and conditions in Section C., of Article IV.

(2). The Tribe may change the source of water from the Natural Flow of the Bighorn River to surface flow or storage of any tributary within the Bighorn River Basin within the Reservation or to Groundwater within the Bighorn River Basin within the Reservation, subject to the terms and conditions in Section C.2.a., of Article IV.

(3). The use of the Tribal Water Right on units of the Crow Irrigation Project that divert water from the Bighorn River as part of that project is a use of the Natural Flow Tribal Water Right set forth in Section A.1.a., of Article III, in the Bighorn River Basin, and the use of this water shall be subject to federal law.

b. Storage in Bighorn Lake.

(1). Subject to the approval of, and any terms and conditions specified by, Congress and to the terms and conditions of the streamflow and lake level management plan agreed to in accordance with Section A.7., of Article III, the Tribe shall be entitled to an allocation of 300,000 AFY of water stored in Bighorn Lake. The Tribe and the State agree to seek as a part of that allocation the following:

(a). not more than 150,000 AFY of the allocation provided in Section A.1.b.(1)., of Article III may be used or diverted as authorized by the Tribe, subject to the terms and conditions in Section C., of Article IV; provided that, not more than 50,000 AFY may be used outside the Reservation subject to the terms and conditions in Section C.2.c., of Article IV. This storage allocation is in addition to the Natural Flow Tribal Water Right provided in Section A.1.a., of Article III.

(b). not less than 150,000 AFY of the allocation provided in Section A.1.b.(1) of Article III shall only be:

(i) managed so as to be available as a Release during low flow periods pursuant to streamflow and lake level management plan agreed to under Section A.7., of Article III; or

(ii) used for beneficial purposes including diversions for consumptive uses in years of excess Natural Flows and excess storage, if any, when unappropriated or unallocated water is available, and subject to the terms and conditions in Section C., of Article IV.

(2). All other water stored in Bighorn Lake, except for the 6,000 AFY currently allocated by contract to the Montana Power Company, or its successor-in-interest, and the 30,000 AFY allocated by Congress to the Northern Cheyenne Tribe, shall be used only for flood control, production of power, maintenance of instream flows, maintenance of lake levels and carryover storage, consistent with Section A.7., of Article III and federal law.

2. Priority Date.

a. Natural Flow. The priority date of the Natural Flow Tribal Water Right set forth in Section A.1.a., of Article III shall be May 7, 1868.

b. Storage. The priority date of the Tribal Water Right to waters stored in Bighorn Lake set forth in Section A.1.b.(1)., of Article III shall be the priority date of the water right held by the Bureau of Reclamation as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, and except for the 50,000 AFY that may be used outside the Reservation as provided in Section A.1.b.(1).(a)., of Article III, the Tribe may divert or permit the diversion of this water right from any place and by any means within the Reservation for use within the Reservation, provided

that, any diversion structure of the Tribal Water Right upstream of the Two Leggins diversion on the Bighorn River will be constructed to bypass streamflows established or modified pursuant to Section A.7., of Article III.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used for any purpose within the Reservation allowed by Tribal and federal law.

6. Protection of Water Rights Recognized Under State Law.

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections A.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC (except for Water Reservation No. 1781-r (g)); water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basin. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in the Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV. Measures to prevent Adverse Affect may include Release of water from Bighorn Lake.

e. Existing uses of the Tribal Water Right shall not be Adversely Affected by new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.

7. Streamflow and Lake Level Management Plan. Pursuant to this Compact, the Tribe, the Secretary, and the State shall develop a streamflow and lake level management plan for the Bighorn River, from the Yellowtail Afterbay Dam to a point immediately upstream of the Two Leggins diversion, and for Bighorn Lake. The streamflow and lake level management plan shall be agreed to within one (1) year after this Compact has been ratified by the Montana legislature. If the streamflow and lake level management plan is not agreed to by the Tribe, the Secretary, or the State the provisions of Section A.4.d., of Article VII apply. The streamflow and lake level management plan is not required to be implemented until the Effective Date of this Compact. The streamflow and lake level management plan may be modified at any time with the consent of the Tribe, the Secretary, and the State. The Montana legislature intends that the streamflow management plan should provide enforceable mechanisms that protect the long-term biological viability of the blue ribbon wild trout fishery on the Bighorn River from the Yellowtail Afterbay Dam to the Two Leggins diversion.

8. Basin Closure within the Bighorn River Basin.

a. In the Bighorn River Basin, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, the DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

B. Basin 43O: Little Bighorn River.

1. Quantification - Source - Volume.

a. The Tribe has a water right for all surface flow, Groundwater, and storage within the Little Bighorn River Basin, except as provided for in Sections B.6., and B.7.a., of Article III, and except for water apportioned to Wyoming, if any, as determined by a court of competent jurisdiction or Congress. Development of the Tribal Water Right shall be subject to the terms and conditions in Section C., of Article IV.

b. The use of the Tribal Water Right on units of the Crow Irrigation Project that divert water in the Little Bighorn River Basin as part of that project is a use of the Tribal Water Right set forth in Section B.1.a., of Article III, and the use of this water shall be subject to federal law. Water stored in Willow Creek Reservoir also is a use of the Tribal Water Right.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section B.1., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means within the Little Bighorn River Basin within the Reservation for use within the Reservation or in connection with Tribal Interests in the Ceded Strip subject to the terms and conditions in Section F., of Article III and Section C.2.b., of Article IV.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used within the Reservation for any purpose allowed by Tribal and federal law.

6. Protection of Water Rights Recognized Under State Law.

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Little Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Little Bighorn Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections B.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC (except for Water Reservation No. 1781-r (g)); water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basin. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in the Little Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

e. Existing uses of the Tribal Water Right shall not be Adversely Affected by new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.

7. Basin Closure within the Little Bighorn River Basin.

a. In the Little Bighorn River Basin, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

C. Basin 43E: Pryor Creek.

1. Quantification - Source - Volume.

a. The Tribe has a water right for all surface flow, Groundwater, and storage within the Pryor Creek Basin within the Reservation, except as provided for in Sections C.6. and C.7.a., of Article III. Development of the Tribal Water Right shall be subject to the terms and conditions in Section C., of Article IV.

b. The use of the Tribal Water Right on units of the Crow Irrigation Project that divert water in the Pryor Creek Basin as part of that project is a use of the Tribal Water Right set forth in Section C.1.a., of Article III, and the use of this water shall be subject to federal law.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section C.1., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means within the Pryor Creek Basin within the Reservation for use within the Reservation.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used within the Reservation for any purpose allowed by Tribal and federal law.

6. Protection of Water Rights Recognized Under State Law.

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Pryor Creek Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Pryor Creek Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections C.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC; water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basin. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in the Pryor Creek Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

e. Existing uses of the Tribal Water Right shall not be Adversely Affected by new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.

7. Basin Closure within the Pryor Creek Basin.

a. In the Pryor Creek Basin, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

D. Basin 42A: Rosebud Creek.

1. Quantification - Source - Volume. The Tribe has a water right for all surface flow, Groundwater, and storage within the Rosebud Creek Basin within the Reservation, except as provided for in Sections D.6. and D.7., of Article III. Development of the Tribal Water Right shall be subject to the terms and conditions in Section C., of Article IV.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section D.1., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means within the Rosebud Creek Basin for use within the Reservation.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used within the Reservation for any purpose allowed by Tribal and federal law.

6. Protection of Water Rights Recognized Under State Law.

a. Within the Reservation. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Rosebud Creek Basin within the Reservation with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Rosebud Creek Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections D.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC; water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued within the Reservation is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basin. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. Outside the Reservation. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Rosebud Creek Basin outside the Reservation are protected from an assertion of senior priority in the exercise of the Crow Tribal Water Right to the same extent provided in the Northern Cheyenne - Montana Compact, Sections A.3.c.i. and ii., of Article II, 85-20-301, MCA. Protection from an assertion of senior priority in the exercise of the Crow Tribal Water Right for the Northern Cheyenne Tribal Water Right shall only be as provided in Section D.7., of Article III.

e. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in the Rosebud Creek Basin within the Reservation with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, or outside the Reservation to the same extent provided in the Northern Cheyenne - Montana Compact, Section A.3.c.i. and ii., of Article II, 85-20-301, MCA.

f. Existing uses of the Tribal Water Right shall not be Adversely Affected by development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect of uses of the Tribal Water Right on Tribally owned land.

7. Protection of Northern Cheyenne Tribal Water Rights within the Northern Cheyenne Reservation.

a. Except as provided in Section G.2., of Article III, the Northern Cheyenne Tribal Water Right, recognized in the Northern Cheyenne - Montana Compact, Section A.3.a., of Article II, 85-20-301, MCA, is protected from an assertion of senior priority in the exercise of the Crow Tribal Water Right.

b. New development, Change in Use, or Transfer of the Crow Tribal Water Right shall not Adversely Affect the exercise of the Northern Cheyenne Tribal Water Right, recognized in the Northern Cheyenne - Montana Compact, Section A.3.a., of Article II, 85-20-301, MCA.

8. Basin Closure within the Rosebud Creek Basin within the Reservation.

a. In the Rosebud Creek Basin upstream from the point that Rosebud Creek or any tributary of Rosebud Creek leaves the Reservation, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

E. Youngs Creek drainage, Squirrel Creek drainage, Tanner Creek drainage, Dry Creek drainage, and Spring Creek drainage within Tongue River Basin; Sarpy Creek drainage within Yellowstone River Basin between Bighorn River and Tongue River; Cottonwood Creek drainage, Five Mile Creek drainage, and Bluewater Creek drainage within Clarks Fork Yellowstone River Basin; Sage Creek drainage within Shoshone River Basin; and, Fly Creek drainage, Blue Creek drainage, Dry Creek drainage, and Bitter Creek drainage within Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River.

1. Quantification - Source - Volume. The Tribe has a water right for all surface flow, Groundwater, and storage within the Reservation within Youngs Creek drainage, Squirrel Creek drainage, Tanner Creek drainage, Dry Creek drainage, and Spring Creek drainage within Tongue River Basin; Sarpy Creek drainage within Yellowstone River Basin between Bighorn River and Tongue River; Cottonwood Creek drainage, Five Mile Creek drainage, and Bluewater Creek drainage within Clarks Fork Yellowstone River Basin; Sage Creek drainage within Shoshone River Basin; and, Fly Creek drainage, Blue Creek drainage, Dry Creek drainage, and Bitter Creek drainage within Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River, except as provided in Sections E.6. and E.7.a., of Article III. Development of the Tribal Water Right shall be subject to the terms and conditions in Section C., Article IV.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section E.1., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means within the drainages listed in Section E.1., of Article III within the Reservation for use within the Reservation.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used for any purpose within the Reservation allowed by Tribal and federal law.

6. Protection of Water Rights Recognized Under State Law.

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the drainages listed in Section E.1., of Article III, with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the drainages listed in Section E.1., of Article III with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections E.6.a.(1). and (2)., of Article III extends only to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC; water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basins. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in each drainage listed in Section E.1., of Article III, with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

e. Existing uses of the Tribal Water Right shall not be Adversely Affected by development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect of uses of the Tribal Water Right on Tribally owned land.

7. Basin Closure within the Reservation.

a. In the drainages listed in Section E.l., of Article III, upstream from the point that each stream or its tributaries leaves the Reservation, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

F. Tribal Water Right in the Ceded Strip.

1. Quantification - Source - Volume.

a. Tribal Interests in the Ceded Strip. As part of the Tribal Water Right, the Tribe has a right to divert a total of 47,000 AFY from surface flow, Groundwater, or storage within the Ceded Strip from portions of the Sarpy Creek drainage and Yellowstone River within Yellowstone River Basin between Bighorn River and Tongue River; Fly Creek drainage and Yellowstone River within Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River; Pryor Creek Basin; and Bighorn River Basin for use in connection with Tribal Interests in the Ceded Strip; and, water imported to the Ceded Strip from the Little Bighorn River Basin for use in connection with Tribal Interests in the Ceded Strip. Diversion and use shall be subject to the terms and conditions in Sections C.1.c. and C.1.d., of Article IV.

(1). This 47,000 AFY is in addition to the Tribal Water Right set forth in Sections A.1., B.1., C.1., and E.1., of Article III, except that any diversion of this right from surface flow, Groundwater, or storage within the Bighorn River Basin shall be deducted from the Tribal Water Right as set forth in Section A.1., of Article III.

(2). No more than 47,000 AFY may be diverted and used in connection with Tribal Interests in the Ceded Strip from all water sources, provided that:

(a). no more than 2,500 AFY from all water sources including the Yellowstone River may be diverted upstream from the confluence of the Bighorn River and the Yellowstone River.

(b). no more than 7,000 AF may be diverted from all sources including the Yellowstone River in any month, provided that, aggregate uses from all sources not exceed 47,000 AFY.

b. Use limited to within the Ceded Strip. The Tribal Water Right of 47,000 AFY for use in connection with Tribal Interests in the Ceded Strip shall be used only within the Ceded Strip and shall not be considered a Change in Use or Transfer outside the Reservation for purposes of Section C.2.c., of Article IV.

c. Any portion of the 50,000 AFY set forth in Section A.1.b.(1).(a)., of Article III which may be used outside the Reservation may also be used in connection with Tribal Interests in the Ceded Strip in addition to the Tribal Water Right of 47,000 AFY set forth in Section F.1.a., of Article III.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section F.1.a., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means for use in connection with Tribal Interests in the Ceded Strip within the Ceded Strip.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip may be used for beneficial purposes allowed by Tribal, federal and state law.

6. Protection of Water Rights Recognized Under State Law.

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law affected by the exercise of the Tribal Water Right in the Ceded Strip with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law with a priority date before this

Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections F.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC (except for Water Reservation Nos. 1781-r and 10006-r); water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basins. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

d. Existing uses of the Tribal Water Right shall not be Adversely Affected by new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.

G. Additional Rights to Water. As part of the water rights specifically set forth in Sections A., B., C., D., E., and F., of Article III, the Tribe has a right to water from the following sources:

1. Appurtenant Water Rights. For land within the Reservation acquired after the Effective Date of this Compact, the Tribe has the right to the use of any water right acquired as an appurtenance to the land. At such time that the acquired land is transferred to trust status, the water right appurtenant to the land acquired shall become part of and not in addition to the Tribal Water Right quantified in this Compact with a May 7, 1868 priority date, provided that, the acquired water right shall retain any protections set forth in this Compact. The Tribe shall notify DNRC of any acquisition of water in the Tribe's annual report and shall identify the water right acquired, as set forth in Section E.1., of Article IV. Any water right acquired shall be added as decreed by the Montana Water Court to the list of current uses of the Tribal Water Right as provided in Section E.2., of Article IV.

2. Exempt Rights.

a. Religious or cultural uses of the Tribal Water Right by Crow Tribal members within the Reservation in de minimis amounts shall be allowed without prior review by DNRC.

b. In accordance with the terms and conditions in Section C.1., of Article IV, TWRD may authorize development of the Tribal Water Right for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations necessary to protect lives or property.

c. Uses of the Tribal Water Right provided for in Sections G.2.a. and G.2.b., of Article III, are not subject to protection of water rights Recognized Under State Law provided in Sections A.6., B.6., C.6., D.6., D.7., E.6., and F.6., of Article III, or streamflows established or modified pursuant to Section A.7., of Article III.

H. Proposed Decree. For purposes of entry in the Montana Water Court, the proposed decree of the Tribal Water Right set forth in Article III is attached as Appendix 1. If there are differences between Appendix 1 and the Final Decree, the Final Decree shall control.

ARTICLE IV - IMPLEMENTATION OF TRIBAL WATER RIGHT

A. General Provisions.

1. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust by the United States.

2. Tribal Water Right: Administration.

a. Subject to the limitations imposed by this Compact and federal law, the use of the Tribal Water Right shall be administered by the Tribe through TWRD within the Reservation, in the Ceded Strip, and outside the Reservation. Disputes, not within the jurisdiction of the Compact Board set forth in F.4., of Article IV, concerning use of the Tribal Water Right in the Ceded Strip and outside the Reservation which raise issues concerning the application of state or federal law shall be resolved in a court of competent jurisdiction. Those disputes concerning use of the Tribal Water Right in the Ceded Strip and outside the Reservation which do not raise issues concerning the application of state or federal law shall be within the exclusive jurisdiction of the Tribe. Subject to the limitations imposed by this Compact, the Tribe shall have the final and exclusive jurisdiction to resolve all disputes concerning the Tribal Water Right between holders of water rights under the Tribal Water Right. TWRD shall develop policies and procedures for monitoring water use, diversions, and maintaining records of water use and development consistent with this Compact. The current water use and diversions and new development shall be identified by location and quantity.

b. Administration and enforcement of the Tribal Water Right shall be pursuant to a Tribal water code, which shall be developed and adopted by the Tribe within two (2) years following the Effective Date of this Compact pursuant to any requirements set forth in the Constitution of the Crow Tribe. Pending the adoption of the Tribal water code, the administration and enforcement of the Tribal Water Right shall be by the Secretary of the Interior.

c. The Tribe shall not administer any water right Recognized Under State Law.

d. Administration, operation and maintenance, and delivery of the Tribal Water Right on the Crow Irrigation Project shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs, in accordance with applicable federal laws. Portions of the Project within the Bozeman Trail and Two Leggins Districts shall be administered in accordance with applicable law.

3. Water Rights Recognized Under State Law: Administration.

a. The State shall administer and enforce all water rights Recognized Under State Law to the use of surface flows, Groundwater, and storage within or outside the Reservation. The State shall have the final and exclusive jurisdiction to resolve all disputes between holders of water rights Recognized Under State Law.

b. The State shall not administer or enforce any part of the Tribal Water Right.

c. For water rights Recognized Under State Law, if any, utilizing water delivered by the Crow Irrigation Project, administration and distribution of such water shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs, in accordance with applicable federal laws.

4. Distribution of Water Between the Parties. When water availability is insufficient to satisfy all water rights under the Tribal Water Right and all water rights Recognized Under State Law within the Reservation, administration and distribution shall be as follows:

a. distribution between the water administered by the Tribe and the United States for current uses of the Tribal Water Right within the Reservation developed as of the date this Compact has been ratified by the Montana legislature and the water for water rights Recognized Under State Law within the Reservation with a priority date before this Compact has been ratified by the Montana legislature shall be on an equitable basis in proportion to the amount of water required for Tribal water use as listed pursuant to Section E.2., of Article IV, and the amount of water required for water rights Recognized Under State Law, provided that, the Parties recognize that distribution may not be on a precise proportional basis due to the need to take into account the physical constraints of water delivery. Administration and distribution by the Tribe, the United States, and the State within their proportional shares shall be pursuant to Tribal, federal, and state law respectively, and shall be coordinated as necessary. This distribution shall not modify the right of a holder of a water right Recognized Under State Law to seek enforcement of such water right against other water rights Recognized Under State Law in priority without the agreement of the water right holder.

b. future development of the Tribal Water Right after this Compact has been ratified by the Montana legislature shall be enforced as junior in priority to the water rights subject to a proportional distribution as set forth in Section A.4.a., of Article IV.

c. nothing in Section A.4.a., of Article IV shall prevent water users from agreeing to an alternative water distribution plan on the basis of individual water rights pursuant to applicable state, Tribal, or federal law.

5. Subsequent Federal or State Law. Administration under Sections A.2.d., A.3.a. and A.3.c., of Article IV shall be as set forth in this Compact except as may otherwise be determined by a court of competent jurisdiction or established by Congress.

B. Use of the Tribal Water Right.

1. Persons Entitled to Use the Tribal Water Right. The Tribal Water Right may be used by the Tribe, Tribal members, or Persons authorized by the Tribe, provided that, the Tribe may not limit or deprive Indians residing on the Reservation or in the Ceded Strip of any right, pursuant to 25 U.S.C. 381, to a just and equal portion of the Tribal Water Right set forth in Article III.

2. Effect of Non-Use of the Tribal Water Right. State law doctrines relating to the use of water rights, including but not limited to relinquishment, forfeiture or abandonment, do not apply to the Tribal Water Right. Thus, non-use of all or any of the Tribal Water Right described in Article III shall not constitute a relinquishment, forfeiture or abandonment of such rights.

C. Tribal Water Right: New Development, Change in Use, or Transfer.

1. New Development of Surface Flow, Groundwater, or Storage of the Tribal Water Right.

a. New Development of Surface Flow, Groundwater, or Storage Within the Reservation. After the Effective Date of this Compact, the Tribe may develop or authorize new development of surface flow, Groundwater, or storage of the Tribal Water Right within the Reservation; provided that, such development shall not Adversely Affect a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. Prerequisite Administrative Procedure within the Reservation. The following procedure for determining whether new development of surface flow, Groundwater, or storage of the Tribal Water Right within the Reservation will have an Adverse Affect on water rights Recognized Under State Law shall be followed prior to seeking relief from the Compact Board:

(1). Application for new development of a surface flow, Groundwater, or storage use within the Reservation shall be made to TWRD.

(2). TWRD shall review the application and make a determination of whether the new development will have an Adverse Affect on water rights Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV. Upon request by TWRD, DNRC shall provide information on state water rights as recorded in the DNRC database to TWRD.

(3). If TWRD determines that the new development will have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, TWRD shall deny the application. If TWRD determines that the new development will not have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, TWRD shall forward the application with its determination to DNRC.

(4). If, based upon the evidence, DNRC agrees with TWRD's determination, DNRC shall notify TWRD. If, however, based upon the evidence, DNRC cannot agree with TWRD's determination, DNRC shall publish notice of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any holder of a water right Recognized Under State Law who, according to the records of the DNRC, has a water right with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, and may be affected by the proposed development. DNRC shall notify TWRD within ninety (90) days of DNRC's determination.

(5). DNRC and TWRD should attempt to resolve any disagreement on TWRD's determination of no Adverse Affect on a cooperative basis. If DNRC or a holder of a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, disagree with the determination of no Adverse Affect, DNRC or the water right holder may seek relief from the Compact Board.

(6). In any proceeding concerning the effect of new Groundwater development of the Tribal Water Right within the Reservation either before TWRD, DNRC, or before the Compact Board, the following shall apply:

(a). Wells Less than 100 Feet: For new Groundwater wells to be completed at a depth beneath the surface of less than 100 feet, the applicant shall bear the burden of showing no Adverse Affect to a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

(b). 100 Feet or Deeper Wells: For new Groundwater wells to be completed at a depth beneath the surface of 100 feet or deeper, the owner of a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, shall bear the burden of showing Adverse Affect to the water right.

(7). In any proceeding concerning the effect of new storage development of the Tribal Water Right within the Reservation either before TWRD, DNRC, or before the Compact Board, the following shall apply:

(a). Storage Over 50 AF: For new storage facilities with a planned constructed capacity of more than 50 AF, the applicant shall bear the burden of showing no Adverse Affect to a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

(b). Storage 50 AF or Less: For new storage facilities with a planned constructed capacity of 50 AF or less, the owner of the water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, shall bear the burden of showing Adverse Affect to the water right.

c. New Development of Surface Flow, Groundwater, or Storage for Use in Connection with Tribal Interests in the Ceded Strip. After the Effective Date of this Compact, the Tribe may develop or authorize new development, from surface flow, Groundwater, or storage, of the Tribal Water Right as set forth in Section F., of Article III and subject to the terms and conditions in Section F.1., of Article III for use in connection with Tribal Interests in the Ceded Strip; provided that, such development shall not Adversely Affect a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

d. Prerequisite Administrative Procedure within the Ceded Strip. The following procedure for determining whether new development of surface flow, Groundwater, or storage of the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip will have an Adverse Affect on water rights Recognized Under State Law shall be followed prior to seeking relief from the Compact Board:

(1). Application for new development of surface flow, Groundwater, or storage of the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip shall be made to TWRD.

(2). TWRD shall review the application and make a determination of whether the new development will have an Adverse Affect on water rights Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA. Upon request by TWRD, DNRC shall provide information on state water rights as recorded in the DNRC database to TWRD.

(3). If TWRD determines that the new development will have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, TWRD shall deny the application. If TWRD determines that the new development will not have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, TWRD shall forward the application with its determination to DNRC.

(4). If, based upon the evidence, DNRC agrees with TWRD's determination, DNRC shall notify TWRD. If, however, based upon the evidence, DNRC cannot agree with TWRD's determination, DNRC shall publish notice of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any holder of a water right Recognized Under State Law who, according to the records of the department, has a water right with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, and may be affected by the proposed development. DNRC shall notify TWRD within ninety (90) days of DNRC's determination.

(5). DNRC and TWRD should attempt to resolve any disagreement on TWRD's determination of no Adverse Affect on a cooperative basis. If DNRC or a holder of a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, disagree with the determination of no Adverse Affect, DNRC or the water right holder may seek relief from the Compact Board.

(6). In any proceeding concerning the effect of new Groundwater development of the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip either before TWRD, DNRC, or before the Compact Board, the following shall apply:

(a). Wells Less than 100 Feet: For new Groundwater wells to be completed at a depth beneath the surface of less than 100 feet, the applicant shall bear the burden of showing no Adverse Affect to a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or exempt rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA.

(b). 100 Feet or Deeper Wells: For new Groundwater wells to be completed at a depth beneath the surface of 100 feet or deeper, the owner of a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, shall bear the burden of showing Adverse Affect to the water right.

(7). In any proceeding concerning the effect of new storage development of the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip either before TWRD, DNRC, or before the Compact Board, the following shall apply:

(a). Storage Over 50 AF: For new storage facilities with a planned constructed capacity of more than 50 AF, the applicant shall bear the burden of showing no Adverse Affect to a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA.

(b). Storage 50 AF or Less: For new storage facilities with a planned constructed capacity of 50 AF or less, the owner of the water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, shall bear the burden of showing Adverse Affect to the water right.

e. Groundwater Development of the Tribal Water Right Exempt from the Showing of No Adverse Affect. The following wells are exempt from the requirement of showing no Adverse Affect:

(1). Wells developed as of the date this Compact has been ratified by the Montana legislature are exempt from the burden to show no Adverse Affect. These wells may be replaced, repaired or rehabilitated to the original constructed capacity. A comprehensive list of wells developed as of the date this Compact has been ratified by the Montana legislature shall be kept on file in TWRD offices as part of the requirement to list current uses of the Tribal Water Right in Section E.2., of Article IV.

(2). An authorized use of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

f. Storage Development of the Tribal Water Right Exempt from the Showing of No Adverse Affect. The following storage facilities are exempt from the requirement of showing no Adverse Affect:

(1). Facilities storing the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature are exempt from the burden to show no Adverse Affect. These storage facilities may be replaced, repaired or rehabilitated to the original constructed capacity. A comprehensive list of storage facilities developed as of the date this Compact has been ratified by the Montana legislature shall be kept on file in TWRD offices as part of the requirement to list current uses of the Tribal Water Right in Section E.2., of Article IV.

(2). An authorized use of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

2. Change in Use or Transfer of the Tribal Water Right.

a. Change in Use or Transfer of the Tribal Water Right Within the Reservation. Unless otherwise stated in this Compact, the Tribe may make or authorize a Change in Use or Transfer of a water right set forth in Article III of this Compact within the Reservation; provided that, such Change in Use or Transfer shall not Adversely Affect a water right Recognized Under State Law with a priority date before the date of the Change in Use or Transfer. Determination of Adverse Affect shall be made following the same procedure used for review of new surface flow, Groundwater, or storage development of the Tribal Water Right set forth in Sections C.1.a. and C.1.b., of Article IV.

b. Change in Use or Transfer of the Tribal Water Right Within the Ceded Strip. Unless otherwise stated in this Compact, the Tribe may make or authorize a Change in Use or Transfer of the Tribal Water Right set forth in Section F.1.a., of Article III within the Ceded Strip; provided that, such Change in Use or Transfer shall not Adversely Affect a water right Recognized Under State Law with a priority date before the date of the Change in Use or Transfer. Determination of Adverse Affect shall be made following the same procedure used for review of new surface flow, Groundwater, or storage development of the Tribal Water Right within the Ceded Strip set forth in Sections C.1.c. and C.1.d., of Article IV.

c. Change in Use or Transfer of the Tribal Water Right Outside the Reservation. Except as otherwise provided in this Compact, the Tribe, pursuant to federal law, may make or authorize a Change in Use or a Transfer of the Tribal Water Right for up to 50,000 acre-feet of water as provided in Section A.1.b.(1).(a)., of Article III, for use outside the Reservation; provided that, any Transfer shall be for a term not to exceed 100 years, and may include provisions authorizing renewal for an additional term not to exceed 100 years; and provided that, no such Transfer shall be a permanent alienation of the water Transferred. Any Change in Use or Transfer of any such water right involving a point of diversion or place of use located outside the Reservation shall be considered a use outside the Reservation, except as provided in Section F., of Article III and Section C.2.b., of Article IV; and, further provided that, any use of Tribal water rights described in this Compact outside the Reservation shall not be deemed to convert such rights to rights arising under state law, and non-use of such rights outside the Reservation shall not constitute a relinquishment, forfeiture, or abandonment of the rights. The Tribe may change the point of diversion or purpose or place of use of the Tribal Water Right back to the Reservation without reduction in the amount of water provided in the Compact.

(1). Applicable Law. No person may initiate a use, Change in Use, or Transfer of a Tribal water right set forth in this Compact outside the Reservation without first complying with applicable state law. Approval of an application for a use, Change in Use, or Transfer outside the Reservation by the State shall be conditioned on a valid Tribal authorization for such use, Change in Use, or Transfer by the Tribe. The applicant shall provide DNRC with proof of a valid Tribal authorization prior to initiating the use, Change in Use, or Transfer.

(2). Diversion Facilities. With respect to diversion or transportation facilities located outside the Reservation which are to be used in connection with the exercise of a water right set forth in this Compact, the Tribe or Persons using such water right shall apply for all permits, certificates, variances and other authorizations required by state laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water. A diversion or use of water in the exercise of such water right may be made only after all permits, certificates, variances or other authorizations applied for pursuant to this paragraph have been obtained.

D. Water Rights Recognized Under State Law: New Development, Change in Use, or Transfer.

1. Limit on New Development. DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature within the Reservation, and outside the Reservation in Bighorn River Basin and in Pryor Creek Basin, provided that, the Department may issue certificates of water right or permits for use on fee land for:

a. An appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

b. An appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

c. Temporary emergency appropriations as provided in 85-2-113(3), MCA.

2. Change in Use or Transfer of Water Rights Recognized Under State Law within the Reservation. The State may authorize a change in use or transfer of a water right Recognized Under State Law within the Reservation in accordance with state law, provided that, such change or transfer shall not Adversely Affect a use of the Tribal Water Right existing at the time of the application for change in use or transfer.

a. Prerequisite Administrative Procedure. The following procedure for determining whether a change in use or transfer of a water right Recognized Under State Law within the Reservation will have an Adverse Affect on an existing water right developed or authorized prior to the date of application for change of use or transfer under the Tribal Water Right shall be followed prior to seeking relief from the Compact Board:

(1). Application for a change in use or transfer of a water right Recognized Under State Law within the Reservation shall be made to DNRC.

(2). DNRC shall review the application and make a determination of whether the change in use or transfer of a water right Recognized Under State Law within the Reservation will have an Adverse Affect on a water right developed or authorized under the Tribal Water Right. Upon request by DNRC, TWRD shall provide information on developed and authorized Tribal Water Rights as recorded by TWRD to DNRC.

(3). If DNRC determines that the change in use or transfer of a water right Recognized Under State Law within the Reservation will have an Adverse Affect on a water right developed or authorized under the Tribal Water Right, DNRC shall deny the application. If DNRC determines that the change in use or transfer of a water right Recognized Under State Law within the Reservation will not have an Adverse Affect on a water right developed or authorized under the Tribal Water Right, DNRC shall forward the application with its determination to TWRD.

(4). If, based upon the evidence, TWRD agrees with DNRC's determination, TWRD shall notify DNRC. If, however, based upon the evidence, TWRD cannot agree with DNRC's determination, TWRD shall publish notice of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any Tribal Water Right holder who, according to the records of TWRD, has a water right developed or authorized before the application date and may be affected by the proposed change in use or transfer of a water right Recognized Under State Law within the Reservation. TWRD shall notify DNRC within ninety (90) days of TWRD's determination.

(5). TWRD and DNRC should attempt to resolve any disagreement on DNRC's determination of no Adverse Affect on a cooperative basis. If TWRD or a holder of a water right developed or authorized under the Tribal Water Right disagree with the determination of no Adverse Affect, TWRD or the Tribal Water Right holder may seek relief from the Compact Board.

E. Reporting Requirements.

1. On an annual basis DNRC shall provide the Tribe and the United States with a listing of all uses of surface flow, Groundwater, or storage for which a certificate of water right or permit has been issued or a change in use or transfer has been approved by DNRC within the Reservation, in the Ceded Strip, and in drainages affected by this Compact.

2. Within one (1) year after this Compact has been ratified by the Montana legislature, the TWRD and the United States shall provide the DNRC with a report listing all current uses of the Tribal Water Right, including uses by Tribal members, existing as of the date this Compact has been ratified by the Montana legislature. DNRC may request additional information from TWRD or the United States to assist in reviewing the report. DNRC must approve or disapprove of the listing of all current uses of the Tribal Water Right within six (6) months after receipt of the report.

3. On an annual basis TWRD shall provide the DNRC and the United States with a listing of all new development of the Tribal Water Right described in this Compact within the Reservation, in the Ceded Strip, and outside the Reservation, and of all Changes in Use or Transfers of water rights within and outside the reservation since the last report.

4. TWRD, DNRC, and the United States may agree to modify the reporting requirements set forth in Sections D.1. and D.3., of Article IV. Such modification is pursuant to, and shall not be deemed a modification of, this Compact.

5. All reporting to the United States under this subsection shall be made to the Billings Area Office of the Bureau of Indian Affairs.

F. Enforcement: Crow-Montana Compact Board.

1. Establishment of Board. There is hereby established the Crow-Montana Compact Board. The Board shall consist of three members: one member selected by the Governor of the State of Montana; one member appointed by the Crow Tribal Chairman; and one member selected by the other two members. All members shall be appointed within six (6) months of the Effective Date of this Compact and within thirty (30) days of the date any vacancy occurs. If an appointment is not timely made by the Governor, the Director of DNRC or his/her designee shall fill the State's position. If an appointment is not timely made by the Crow Tribal Chairman, the Director of TWRD or his/her designee shall fill the Tribe's position. Each member shall serve a five-year term and shall be eligible for reappointment. The initial term of each member shall be staggered with one member serving a five-year term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen by lot. Expenses of the members appointed by the State and the Tribe shall be borne by the entity appointing the member. The expenses of the third member and all other expenses shall be borne equally by the Tribe and the State, subject to the availability of funds.

2. Membership. Should the two appointed members fail to agree on the selection of a third member within sixty (60) days of the date of appointment of the second member, or within thirty (30) days after any vacancy occurs, the following procedure shall be utilized:

a. Within five (5) days thereafter each member shall nominate three persons to serve as a member of the Board;

b. Within fifteen (15) days thereafter each member shall reject two of the persons nominated by the other member;

c. Within five (5) days thereafter, the remaining two nominees shall be submitted to the Dean of the University of Montana School of Law who shall select the third member from the two nominees.

3. Quorum and Vote Required. Two members of the Board shall constitute a quorum if reasonable notice of the time, place, and purpose of the meeting, hearing, or other proceeding has been provided in advance to the absent member. All Board decisions shall be by a majority of the Board, shall be in writing and, together with any dissenting opinions, shall be served on all parties in the proceeding before the Board, and on the Parties to this Compact.

4. Jurisdiction of the Board. The Crow-Montana Compact Board shall have jurisdiction to resolve controversies over the right to the use of water as between the Parties or holders of water rights developed or authorized under the Tribal Water Right and holders of water rights Recognized Under State Law. Such controversies shall include, but shall not be limited to, disputes as to the meaning of this Compact.

5. Prerequisite Administrative Procedures.

a. Any holder of a water right Recognized Under State Law concerned that a new development, Change in Use, or Transfer of the Tribal Water Right is inconsistent with the Compact shall first contact the Billings Regional Office of DNRC. If DNRC and TWRD are unable to resolve the issue in a manner acceptable to the water right holder within a reasonable time through discussion, DNRC or the water right holder may seek relief through the Compact Board. The Tribe agrees to allow DNRC reasonable access onto Tribal land or to assist DNRC in obtaining reasonable access onto the land of the Tribal Water Right holder to observe the challenged new development, Change in Use, or Transfer.

b. Any Tribal Water Right holder concerned that a new development, change in use, or transfer of water by a holder of a water right Recognized Under State Law is inconsistent with the Compact shall first contact TWRD. If TWRD and DNRC are unable to resolve the issue in a manner acceptable to the Tribal Water Right holder within a reasonable time through discussion, TWRD or the Tribal Water Right holder may seek relief through the Compact Board. DNRC agrees to assist TWRD in obtaining reasonable access onto the land of the holder of the water right Recognized Under State Law to observe the challenged development, change in use, or transfer.

c. TWRD and DNRC may jointly develop supplemental procedures as necessary or appropriate. Such supplemental procedures are pursuant to, and shall not be deemed a modification of, this Compact.

6. Powers and Duties. The Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint technical experts. The Tribe and the State shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribe and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The parties to the controversy may present evidence and cross examine any witnesses. The Board shall determine the controversy and grant any appropriate relief, including a temporary order; provided that, the Board shall have no power to award money damages, costs, or attorneys' fees. All decisions of the Board shall be by majority vote and in writing. The Board shall adopt necessary rules and regulations to carry out its responsibilities within six (6) months after its first meeting. All records of the Board shall be open to public inspection, except as otherwise ordered by the Board.

7. Review and Enforcement of Board Decisions.

a. Decisions by the Board shall be effective immediately, unless stayed by the Board. Unless otherwise provided by Congress, only the United States and parties to the proceedings before the Board may appeal any final decision by the Board to a court of competent jurisdiction within thirty (30) days of such decision. The hearing on appeal shall be a trial de novo. The notice of appeal shall be filed with the Board and served personally or by registered mail upon all parties to the proceeding before the Board.

b. Unless an appeal is filed within thirty (30) days of a final decision of the Board, as provided in Section F.7.a., of Article IV, any decision of the Board shall be recognized and enforced by any court of competent jurisdiction on petition of the Board, or any party before the Board in the proceeding in which the decision was made.

c. A court of competent jurisdiction in which a timely appeal is filed pursuant to Section F.7.a., of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section F.7.b., of Article IV, may order such temporary or permanent relief as it considers just and proper.

d. An appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to Section f.7.a., of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section F.7.b., of Article IV, in the manner and to the same extent as from orders or judgments of the court in a civil action.

e. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the court the record of the proceedings before the Board within sixty (60) days of filing of a notice of appeal.

8. Waiver of Immunity. The Tribe and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, in order to permit the resolution of disputes under this

Compact by the Crow-Montana Compact Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribe or the State shall not extend to any action for money damages, costs, or attorneys' fees. The Parties agree that only Congress can waive the immunity of the United States. The participation of the United States in the proceedings of the Compact Board shall be as provided by Congress.

ARTICLE V - DISCLAIMERS AND RESERVATIONS

A. No Effect on Other Tribal Rights or Other Federal Reserved Water Rights.

1. Except as provided in Sections A.1.b.(2). and D.7., of Article III, the relationship between the Tribal Water Right described herein and any rights to water of any other Indian Tribe or its members, or of the United States on behalf of such Tribe or its members shall be determined by the rule of priority.

2. Nothing in this Compact may be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other Indian tribes or their members outside of the Crow Reservation.

3. Nothing in this Compact is otherwise intended to affect or abrogate a right or claim of an Indian Tribe other than the Crow Tribe.

4. Except as otherwise provided herein and authorized by Congress, nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the reserved rights to water of any other federal agency or of any other federal lands. Such reserved rights will be subject to the rule of priority in their use.

B. General Disclaimer. Nothing in this Compact shall be so construed or interpreted:

1. As a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State, or the United States and any other state;

2. To preclude the acquisition or exercise of a right Recognized Under State Law to the use of water by any member of the Tribe outside the Reservation by purchase of such right or by acquisition of land, or by application to the State;

3. To determine the relative rights inter sese of Persons using water under the authority of the State or the Tribe;

4. To limit in any way the rights of the Parties or any other person to litigate any issues or questions not resolved by this Compact;

5. To authorize the taking of a water right which is vested under state or federal law;

6. To create or deny substantive rights through headings or captions used in this Compact;

7. To address or prejudge whether or how, in any interstate apportionment, the Tribe's water right shall be counted as part of the waters apportioned to the State;

8. To prohibit the Tribe, or the United States on behalf of the Tribe, from objecting in any general stream adjudication in Montana Water Court to any claims to water rights;

9. To constitute a waiver of sovereign immunity by the Tribe, State, or United States, except as is expressly set forth in this Compact;

10. Unless otherwise provided by Congress, to prevent the United States, as trustee for the Tribe or Tribal members, or the Tribe itself, from filing an action in any court of competent jurisdiction, to prevent any party from interfering with the enjoyment of the Tribal Water Right;

11. To impair, amend, or alter rights under existing state or federal law;

12. To affect or determine the applicability of any state or federal law, including, without limitation, environmental and public safety laws, on activities of the Tribe or Tribal members within the Reservation or in connection with Tribal Interests in the Ceded Strip;

13. To alter or amend any provision or to adopt or preclude any interpretation of the Yellowstone River Compact, Act of October 10, 1951, ch. 629, 65 Stat. 663 (1951);

14. To alter or abridge any right reserved to the Crow Tribe of Indians under Article 4 of the May 7, 1868 Treaty of Fort Laramie; or

15. To prejudice any right that Tribal members may have to secure a portion of the Tribal Water Right from the Tribe.

C. Rights Reserved. The Parties expressly reserve all rights not granted, recognized or relinquished in this Compact.

D. Obligations of United States Contingent.

1. Notwithstanding any other language in this Compact, except as authorized under other provisions of federal law, the obligations of the United States under this Compact shall be contingent on authorization by Congress.

2. The State and the Tribe recognize that this Compact has not been reviewed and approved by the United States or any agency thereof and ratification by the Montana legislature or ratification by the Tribal Council in no manner binds or restricts the discretion of the United States in the negotiation of all related matters, including but not limited to, coal severance tax, Section 2 of the Crow Allotment Act (41 Stat. 751), water rights, and State and Federal contribution or cost share.

E. Expenditures of Money Contingent. The expenditure or advance of any money or the performance of any work by the United States or the Tribe pursuant to this Compact which may require appropriation of money by Congress or allotment of funds shall be contingent on such appropriation or allotment being made.

ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

A. State Contribution to Settlement.

1. The State agrees to contribute the sum of $15 million, in equal annual installments for a period of no more than fifteen years beginning July 1, 1999, to a fund for the use and benefit of the Tribe.

2. Payment of the State's contributions for the benefit of the Tribe is contingent on the final approval of this Compact by the Tribe and Congress, the final inclusion of the rights set forth in the Compact in decrees by the Montana Water Court and the expiration of the time for appeal from all orders effecting such inclusion or the affirmance of the decrees or orders on appeal, the provision of releases of claims as provided in Section A.4., of Article VI, and the fulfillment of any other conditions to the effectiveness of the Compact.

3. Until all conditions for payment are fulfilled, the State and the Tribe agree that any payments due shall be paid into an interest-bearing escrow account, to be held without distribution of principal or interest until all conditions for payment to the Tribe are satisfied, except that the State and the Tribe may agree in writing that some portion of the interest earned on the funds in the escrow account may be disbursed to the Tribe before all conditions for payment are satisfied.

4. The Tribe agrees that the State's contribution will be dedicated to economic development and water and sewer infrastructure within the Crow Reservation. The Tribe further agrees that the State's contributions as set forth in Section A.1., of Article VI and any other agreements that may be set forth in a separate coal severance tax settlement agreement between the State and Tribe should be considered as fully satisfying any cost-share obligation on the part of the State for this Compact. The Tribe further agrees that the State's contributions and agreements herein are full and adequate consideration for the Tribe's agreements as set forth in this Compact, and that the State's contributions, together with any other agreements that may be set forth in a separate coal severance tax settlement agreement between the State and the Tribe, are full and adequate consideration for the release of all claims by the Tribe and the United States in the civil action captioned Crow Tribe of Indians v. State of Montana, Cause No. CV-78-110-BLG-JDS (D. Mont.). The Tribe further agrees that in consideration of the State's contributions and other agreements set forth in a separate coal severance tax settlement agreement, the Tribe will provide releases of all claims, including any pleadings or proposed orders necessary to implement or otherwise give effect to the releases, in that action in a form acceptable to the Attorney General of the State.

B. Federal Legislation. The Tribe and the State agree to support federal legislation ratifying this Compact that will accomplish the following:

1. Bighorn Lake Water Supply. The State and the Tribe agree to support federal legislation that will provide an allocation of storage water in Bighorn Lake, as described in Section A.1.b., of Article III and which will reallocate the water in Bighorn Lake as set forth in Section A.1.b.(1).(b).(i)., of Article III. The priority date for the allocation shall be the date of the water right

held by the Bureau of Reclamation as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA. This allocation shall be held in trust for the Tribe by the United States and will be part of the Tribal Water Right.

2. Right to Participate in Future Projects to Import Water. The Tribe shall have the right to initiate or participate in any project to augment the water supply in the Basins listed in Sections B., C., D. and E., of Article III, by transferring water from another drainage, and to have any such augmentation project deliver any entitlement of the Tribe to water to a point within the Reservation designated by the Tribe.

3. Federal Court Jurisdiction. That the federal courts shall have jurisdiction to enforce the provisions of this Compact and to hear appeals from and enforce decisions of the Compact Board in accordance with Section F.7., of Article IV.

C. Federal Contributions to Settlement. Federal contributions to settlement shall be as provided by Congress.

ARTICLE VII - FINALITY, SETTLEMENT OF CLAIMS, EFFECTIVENESS OF COMPACT, AND WAIVER OF CLAIMS

A. Ratification and Effectiveness of Compact.

1. This Compact shall become Effective on the date it is ratified by the Tribe, by the State, and by the Congress of the United States, whichever date is latest. Upon ratification of this Compact by the Tribe and by the State, whichever is later, the terms of this Compact may not be altered, voided, or modified in any respect without the consent of both the Tribe and the State. Once ratified by Congress, the Tribe, and the State, the Compact may not be modified without the consent of the Tribe, the State, and the United States.

2. Notwithstanding any other provision in this Compact, the Tribe reserves the right to withdraw as a Party to this Compact:

a. If Congress has not ratified this Compact within four (4) years from the date the Compact is ratified by the State;

b. If appropriations are not authorized by Congress within four (4) years of the date the Compact is ratified by the Tribe;

c. If the Tribe and the United States do not reach agreement on the federal contribution to settlement;

d. If appropriations are not made in the manner contemplated by the federal legislation ratifying the Compact; or

e. If the Tribe and the United States do not reach agreement on settlement of issues regarding Section 2 of the Crow Allotment Act (41 Stat. 751).

3. The Tribe may exercise its right to withdraw by sending to the Governor of the State of Montana and to the Secretary of the Interior by certified mail a resolution of the Crow Tribal Council stating the Tribe's intent to withdraw and specifying a withdrawal date not sooner than thirty (30) days from the date of the resolution. On the date designated in the resolution for Tribal withdrawal, this Compact shall become null and void without further action by any Party, and the Parties agree to resume negotiation in good faith for quantification of the water rights of the Crow Tribe and entry of a decree in a court of competent jurisdiction.

4. Notwithstanding any other provision in this Compact, the State reserves the right to withdraw as a Party to this Compact:

a. If the Tribe and Congress have not ratified this Compact within five (5) years from the date the Compact is ratified by the State;

b. If Congress requires a state contribution to settlement that exceeds the contributions described in Section A., of Article VI;

c. If Congress resolves issues under Section 2 of the Crow Allotment Act (41 Stat. 751) in a manner Adversely Affecting water rights Recognized Under State Law;

d. If a streamflow and lake level management plan pursuant to Section A.7., of Article III is not agreed to within one (1) year after this Compact has been ratified by the Montana legislature or any extended deadline agreed to by the State, or if federal legislation is inconsistent with the streamflow and lake level management plan; or

e. If the Department of Natural Resources and Conservation does not approve the list of current uses of the Tribal Water Right pursuant to Section E.2., of Article IV.

5. The State may exercise its right to withdraw by sending to the Crow Tribal Chairman and to the Secretary of the Interior a letter delivered by certified mail from the Governor of the State of Montana stating the State's intent to withdraw and specifying a withdrawal date not sooner than thirty (30) days from the date of the letter. On the date designated in the letter for State withdrawal, this Compact shall become null and void without further action by any Party, and the Parties agree to resume negotiation in good faith for quantification of the water rights of the Crow Tribe and entry of a decree in a court of competent jurisdiction.

6. Notwithstanding any other provision in this Compact, the Department of the Interior reserves the right to refuse to support federal legislation ratifying this Compact.

7. The Parties understand and accept that federal financial contributions to the Compact may not be budgeted until October of the year following the year of enactment of the Compact.

B. Incorporation Into Decrees and Disposition of Federal Suit.

1. The Tribe, the State, and the United States agree to defend the provisions and purposes of this Compact including the quantification set forth in Article III, from all challenges and attacks in all proceedings pursuant to this Section B., of Article VII.

2. Within one hundred eighty (180) days of the date this Compact is ratified by the Crow Tribal Council, the State of Montana, and Congress, whichever is latest, the Tribe, the State, or the United States shall file, in the general stream adjudication initiated by the State of Montana, pursuant to the provisions of 85-2-702(3), MCA, a motion for entry of the proposed decree set forth in Appendix 1 as the decree of the water rights held by the United States in trust for the Crow Tribe. If the Montana Water Court does not approve the proposed decree submitted with the motion within three years following the filing of the motion, the Compact shall be voidable by agreement of the State and the Tribe. If the Montana Water Court approves the proposed decree within three years, but the decree is subsequently set aside by the Montana Water Court or on appeal, the Compact shall be voidable by agreement of the State and the Tribe. Any effect of the failure of approval or setting aside of the decree on the approval, ratification, and confirmation by the United States shall be as provided by Congress. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

3. Consistent with 3-7-224, MCA, setting forth the jurisdiction of the chief water judge, for the purposes of 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to Article III, and Appendix 1, and may extend to other sections of the Compact only to the extent that they relate to the determination of existing water rights. The final decree shall consist of Article III as displayed in Appendix 1, and such other information as may be required by 85-2-234, MCA. Nevertheless, pursuant to 85-2-702(3), MCA, the terms of the entire Compact must be included in the preliminary decree without alteration for the purpose of notice.

4. Upon the issuance of a final decree by the Montana Water Court, or its successor, and the completion of any direct appeals therefrom, or upon the expiration of the time for filing any such appeal, the United States, the Tribe, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed. R. Civ. P., to dismiss the Tribe's claims, and any claims made by the United States as trustee for the Tribe, in U.S. v. Big Horn Low Line Canal Company, et al., No. CIV-75-34-BLG (filed April 17, 1975) (hereinafter referred to as "Low Line Canal") and such claims may only be refiled if the Tribe exercises its option to withdraw as a Party to the Compact pursuant to Section A.3., of Article VII. This Compact shall be filed as a consent decree in Low Line Canal only if, prior to the dismissal of Low Line Canal as provided in Section B., of Article VII, it is finally determined in a judgment binding upon the State of Montana that the state courts lack jurisdiction over, or that the state court proceedings are inadequate to adjudicate, some or all of the water rights asserted in Low Line Canal.

C. Settlement of Water Right Claims. The water rights and other rights confirmed to the Tribe in this Compact are in full and final satisfaction of the water right claims of the Tribe and the United States on behalf of the Tribe and its members, including federal reserved water rights claims based on Winters v. United States, 207 U.S. 564 (1908). In consideration of the rights confirmed to the Tribe in this Compact, and of performance by the State of Montana and the United States of all actions required by this Compact, including entry of a final order issuing the decree of the reserved water rights of the Tribe held in trust by the United States as quantified in the Compact and displayed in Appendix 1, the Tribe and the United States as trustee for the Tribe and Tribal members hereby waive, release, and relinquish any and all claims to water rights or to the use of water within the State of Montana existing on the date this Compact is ratified by the State, the Tribe, and Congress and conditional upon a final decree, whichever date is later.

D. Binding Effect. After the Effective Date of this Compact, its terms shall be binding:

1. Upon the State and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State of Montana; provided that, the validity of consent, ratification, or authorization by the State is to be determined by Montana law;

2. Upon the Tribe, Tribal members, and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right to the use of the Tribe's water right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribe or a Tribal member, or any right arising under tribal law; provided that, the validity of consent, ratification or authorization by the Tribe is to be determined by tribal law; and

3. Upon the United States and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the United States to the use of water in the State of Montana; provided that, the validity of consent, ratification or authorization by the United States is to be determined by federal law.

E. Waiver of Claims or Objections.

1. After the Effective Date of this Compact, the Tribe, any individual claiming a right to use water based on or derived from the Tribe, and the United States on behalf of the Tribe or a Tribal member, shall be prohibited from objecting to, or bringing a claim against, the claim or holder of a right to use water based on the laws of the State of Montana, and any carriage, storage, or delivery facilities and rights of way associated therewith, based on the assertion that such right is invalid because 85-2-301(4), MCA, is invalid as applied to such right, or that such right is inconsistent with or otherwise impairs any right reserved by the Tribe under Article 4 of the May 7, 1868 Treaty of Fort Laramie. If and to the extent necessary to effectuate the intent of this paragraph the Tribe, any individual claiming a right to use water based on or derived from the Tribe, and the United States on behalf of the Tribe shall be deemed to have waived and relinquished any claims or objections they may have against a holder of a right to use water based on the laws of the State of Montana, and any carriage, storage, or delivery facilities and rights of way associated therewith, based on the aforementioned law and Treaty.

2. Waiver of claims by the Tribe against the United States shall be as provided by Congress.

ARTICLE VIII - LEGISLATION

The State and Tribe agree to seek enactment of any legislation necessary to effectuate the provisions and purposes of this Compact, and to defend the provisions and purposes of this Compact from all challenges and attacks; provided that, no provision of the Compact shall be modified as to substance except as may be provided herein.

IN WITNESS WHEREOF the representatives of the State of Montana, the Crow Tribe, and the United States have signed this Compact on the ____ day of____, 19____.

History: En. Sec. 1, Ch. 3, Sp. L. June 1999; amd. Sec. 1, Ch. 44, L. 2009.

85-20-902. Findings and purpose. (1) It is the policy of the state of Montana to seek negotiated settlements of federal and Indian reserved water rights claims in Montana under Title 85, chapter 2, part 7.

(2) Pursuant to this policy, the commission commenced negotiations with the Crow Tribe regarding the Tribe's water rights claims on November 12, 1981.

(3) A water rights compact has been agreed to between the commission and the elected representatives of the government of the Crow Tribe that, among other things, provides an allocation of water to the Crow Tribe and provides protection for certain water rights recognized under state law in Montana.

(4) As consideration for the Crow Tribe's agreement to protect certain water rights recognized under state law in Montana and to release certain legal claims asserted against the state, the state of Montana has undertaken an obligation to make certain payments for the

benefit of the Crow Tribe and has agreed that any future production taxes collected by the state on production of coal owned by the United States in trust for the Crow Tribe will be paid to the Crow Tribe.

(5) The commission's agreement to the compact and the state's obligation to make payments to the Crow Tribe thereunder is conditioned, among other things, upon the final approval of the compact as set forth in the compact and as required by state, federal, and tribal law and upon the execution and delivery by the Crow Tribe of sufficient releases for the legal claims that the Crow Tribe has agreed to release.

(6) The purposes of 85-20-902 through 85-20-905 are to provide for the implementation of the compact, to provide a mechanism for settlement of certain claims against the state, and to provide a means to fund the state's financial obligations for the upcoming biennium under its water rights compact with the Crow Tribe.

History: En. Sec. 1, Ch. 1, Sp. L. June 1999.

85-20-903. Definitions. As used in 85-20-902 through 85-20-905, the following definitions apply:

(1) "Commission" means the reserved water rights compact commission.

(2) "Compact" means the Crow-Montana water rights compact as approved by the legislature in 85-20-901.

(3) "Department" means the department of natural resources and conservation.

History: En. Sec. 2, Ch. 1, Sp. L. June 1999.

85-20-904. Payment of settlement funds into escrow — requirements for escrow agreement — notice from attorney general. (1) The department shall enter into an agreement with the Crow Tribe and, if necessary under federal or tribal law, the United States, selecting an escrow agent to hold any funds paid by the state prior to the time they become payable to the Crow Tribe under this section. When an escrow agent has been selected, the department shall negotiate the terms of an escrow agreement and any changes to the agreement authorized by law with the Crow Tribe, the escrow agent, and if necessary under federal or tribal law, the United States. The terms of the agreement must govern the holding of the funds paid pursuant to the settlement. The escrow agreement must provide that any costs and fees payable for the management of the escrow fund will be borne by the fund, that the funds placed in the escrow account will be invested and held at interest in trust for the Crow Tribe, and that, except as provided in subsection (4), the contents of the fund will become payable to the order of the Crow Tribe only upon the occurrence of all of the following conditions:

(a) the compact has been approved by the Congress of the United States in a form satisfactory to the commission;

(b) the compact has been approved by the Crow Tribe in the manner provided by federal and tribal law, including approval of any tribal referendum presently or later required by federal or tribal law;

(c) the compact has been approved by the Montana water court for inclusion in the final decrees in all affected basins, and the order of approval has been affirmed on appeal or the time for appeal from the water court's approval has expired; and

(d) the Crow Tribe and the United States have furnished releases, pleadings, and proposed orders, in forms acceptable to the attorney general, with respect to all claims, including but not limited to claims for costs and attorney fees, asserted in the civil action captioned Crow Tribe of Indians v. State of Montana et al., Cause No. CV-78-110-BLG-JDS (D. Mont.), or any appeal pending in that action.

(2) Within 20 days after all conditions set forth in subsections (1)(a) through (1)(d) have been satisfied, the attorney general shall provide written notice of the satisfaction of the conditions to the escrow agent. The escrow agreement must provide that upon receipt of the written notice provided in this section, the escrow agent shall pay the funds in escrow to the order of the Crow Tribe. This section does not preclude the Crow Tribe from entering into an agreement with the escrow agent or any other entity for the holding of the funds in trust for the Crow Tribe for a period in excess of that provided in this section.

(3) The escrow agreement must provide that in the event the conditions set forth in subsection (1) do not occur within any time limits set in the compact, as those limits may

be extended pursuant to the compact by agreement of the parties and the approval of the legislature, or if any party to the compact terminates the compact as provided in the compact prior to payment of the funds to the Crow Tribe as provided in subsection (2), the principal and any interest remaining in the escrow fund will revert to the state.

(4) The escrow agreement must provide that interest earned on the escrow fund for each fiscal year, up to a maximum of $650,000 in any fiscal year, must be paid to the Crow Tribe for its use for the purposes set forth in section VI.A.4 of the compact. Any interest in excess of $650,000 in any fiscal year must remain in the escrow account to be managed as provided in subsection (1) and dispersed as provided in subsection (2) or (3).

History: En. Sec. 3, Ch. 1, Sp. L. June 1999; amd. Sec. 2, Ch. 44, L. 2009.

85-20-905. Settlement of litigation — disposition of production taxes collected on coal owned in trust for Crow Tribe. (1) The governor and attorney general may enter into an agreement with the Crow Tribe and the United States for the settlement of the civil action captioned Crow Tribe of Indians v. State of Montana et al., Cause No. CV-78-110-BLG-JDS (D. Mont.), or any appeal pending in that action.

(2) The agreement may:

(a) include a release of all claims asserted by the Crow Tribe and the United States in the action, including but not limited to claims for costs and attorney fees;

(b) provide payments as authorized in the compact and 85-20-902 through 85-20-905; and

(c) include an agreement by which the proceeds of any production taxes levied under Montana law on the severance or production of coal owned by the United States in trust for the Crow Tribe are to be paid to the Crow Tribe.

History: En. Sec. 4, Ch. 1, Sp. L. June 1999.

Part 10
Fort Belknap-Montana Compact

85-20-1001. Fort Belknap-Montana compact ratified. The Compact entered into by the State of Montana and the Fort Belknap Indian Community of the Fort Belknap Reservation and filed with the Secretary of State of the State of Montana under the provisions of 85-2-702, MCA, on April 16, 2001, is ratified. The Compact is as follows:

WATER RIGHTS COMPACT ENTERED INTO BY THE STATE OF MONTANA, THE FORT BELKNAP INDIAN COMMUNITY OF THE FORT BELKNAP RESERVATION, AND THE UNITED STATES OF AMERICA

This Compact is entered into by and among the State of Montana, the Fort Belknap Indian Community of the Fort Belknap Reservation, and the United States of America for the purpose of settling all existing water rights claims of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation in the State of Montana. The Compact is not effective until approved by the Tribes, the Montana Legislature, and the United States Congress. The participation of the United States in each relevant section of the Compact is not valid until the Compact is ratified by Congress.

ARTICLE I - RECITALS

WHEREAS, pursuant to the Treaty of 1855, 11 Stat. 657 and the Acts of Congress of 1874, 18 Stat. 28, and 1888, 25 Stat. 113, a Reservation was established in Montana for the Gros Ventre and Assiniboine Tribes; and

WHEREAS, pursuant to said Treaty and Acts of Congress, the Gros Ventre and Assiniboine Tribes claim reserved water rights to fulfill the purposes of the Treaty, the Acts of Congress, and Winters v. United States, 207 U.S. 564 (1908); and

WHEREAS, in 1979, the United States, on behalf of the Gros Ventre and Assiniboine Tribes of the Fort Belknap Reservation, brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribes' water rights claims, see United States v. Aageson, No. CIV-79-21-GF (filed April 5, 1979); and

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America in trust for the Tribes; see "the McCarran Amendment," 43 U.S.C. § 666(a)(1) (1952); Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983); and

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes Gros Ventre and Assiniboine tribal water rights; and

WHEREAS, the Montana Reserved Water Rights Compact Commission, under § 85-2-702(1), MCA, is authorized to negotiate settlement of water rights claims filed by Indian tribes and/or on their behalf by the United States claiming reserved waters within the State of Montana; and

WHEREAS, the federal district court litigation was stayed in 1983 pending the outcome of Montana state court water adjudication proceedings, see Northern Cheyenne v. Adsit, 721 F.2d 1187 (9th Cir., 1983); and

WHEREAS, the adjudication of the Gros Ventre and Assiniboine tribal water rights in the state court proceedings has been suspended pursuant to § 85-2-217, MCA, while negotiations are proceeding to conclude a compact resolving all water rights claims of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation within the State of Montana; and

WHEREAS, the Fort Belknap Community Council, or its duly designated representatives, have authority to negotiate this Compact pursuant to Resolution No. 19-81 of the Fort Belknap Community Council, February 17, 1981, as amended; and

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§ 516-17 (1993); and

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. § 1457 (1986), inter alia; and

WHEREAS, the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation, the State of Montana, and the United States agree that the Tribal Water Right, water development, and water management described in this Compact are in satisfaction of the water rights claims of the Tribes, Tribal members, and Allottees, and of the United States on behalf of the Tribes and their members and Allottees within the State of Montana; and

WHEREAS, the Parties agree that it is in the best interest of all Parties that the water rights claims of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation be settled through agreement between and among the Tribes, the State of Montana, and the United States.

NOW THEREFORE, the Parties agree to enter into this Compact for the purpose of settling the water rights claims of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community, Tribal members, and Allottees of the Fort Belknap Reservation within the State of Montana.

ARTICLE II - DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

1. "Acre-feet per year" or "AFY" means an annual quantity of water measured in acre-feet over a period of a year.

2. "Acre-foot" or "Acre-feet" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet of water.

3. "Adverse Effect" or "Adversely Affect" means an actual interference with the reasonable exercise of a water right resulting in a material injury.

4. "Allottee" or "Allottees" means any individual or individuals who own or hold a trust allotment or interest in a trust allotment on the Fort Belknap Reservation under the authority of the General Allotment Act and subject to the terms and conditions of that Act.

5. "Arising Under Federal Law" means, as applied to a water right, a water right created or defined under federal law.

6. "Arising Under State Law" means, as applied to a water right, a water right created under Montana law and does not include water rights Arising Under Federal Law.

7. "Beaver Creek Basin" means Montana Water Court Basin 40M, consisting of the mainstem of Beaver Creek and its tributaries, including Big Warm Creek and Little Warm Creek, to its confluence with the Milk River, as shown in Appendix 2.

8. "Board" means the Fort Belknap - Montana Compact Board established by Section D. of Article IV of this Compact.

9. "Calculated Undepleted Flow of the Milk River" means the flow available for the Tribal Water Right determined pursuant to Section E.2. of Article IV, and represents the calculated United States' Share of the Natural Flow of the Milk River at the diversion point on the Reservation.

10. "Cfs" means cubic feet per second.

11. "Change in Use" means, as applied to the Tribal Water Right, a change in the point of diversion, the place of use, the purpose of use, or the place or means of storage.

12. "Combined Development" means, in reference to small wells and springs, a use or proposed use of water for the same purpose.

13. "Compact" means the water rights settlement entered into by the State of Montana, the Fort Belknap Indian Community of the Fort Belknap Reservation, and the United States of America.

14. "Depletion" means the amount of water consumptively used, or the difference between the amount of water diverted and returned to the source of supply.

15. "Direct Use" means diversion of water from the source to be used for a designated purpose without intermediate storage.

16. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.

17. "Eastern Crossing" means the most downstream location at which the mainstem of the Milk River crosses the 49th parallel to re-enter the United States from Canada.

18. "Effective Date" means the date on which the Compact is finally approved by a referendum vote by the eligible members of the Fort Belknap Indian Community and ratified by the Fort Belknap Indian Community Council, by the Montana Legislature, and by the Congress of the United States, whichever date is latest.

19. "Exempt New Development" means new development of the Tribal Water Right that is exempt from review pursuant to Section A.4. of Article IV.

20. "Fort Belknap Indian Irrigation Project" means the irrigation projects authorized by federal law for development on the Reservation in the Milk River and Peoples Creek Basins.

21. "Groundwater" means any water that is beneath the ground surface.

22. "Hydrologically Connected" means the interconnection of groundwater and surface water such that they constitute one water supply and use of either results in an impact to both.

23. "Milk River Coordinating Committee" or "MRCC" means the basin organization established pursuant to Section C.1. of Article IV.

24. "Milk River Basin" means the mainstem of the Milk River and its tributaries from its headwaters to the confluence with the Missouri River and consists of: Montana Water Court Basins 40F, 40G, 40H, 40I, 40J, 40K, 40L, 40M, 40N, and 40O; and the portion of the Milk River and its tributaries flowing through the Provinces of Alberta and Saskatchewan in Canada.

25. "Milk River Basin 40J" or "Basin 40J" means the portion of the Milk River Basin, including the tributaries of Threemile Creek, White Bear Creek and Fifteenmile Creek, constituting Water Court Basin 40J, as shown in Appendix 2.

26. "Milk River Project" means the Reclamation project on the Milk and St. Mary Rivers in Montana authorized by the Reclamation Act of 1902, 32 Stat. 388; 43 U.S.C. 391.

27. "Missouri River Basin 40EJ" or "Basin 40EJ" means the portion of the Missouri River Basin including the tributaries of Suction, Rattlesnake, Tin Cup, Little Suction, and Cow Creeks constituting Water Court Basin 40EJ, as shown in Appendix 2.

28. "Non-Exempt New Development" means new development of the Tribal Water Right that is subject to review pursuant to Section A.5. of Article IV.

29. "Parties" means the Fort Belknap Indian Community of the Fort Belknap Reservation, the State of Montana, and the United States of America.

30. "Peoples Creek Basin" means Water Court Basin 40I, consisting of the mainstem of Peoples Creek to its confluence with the Milk River, and its tributaries including: Duck Creek; the South Fork of Peoples Creek; Little Peoples Creek; Jim Brown Creek; Lodge Pole Creek; Lone Tree Coulee; and Mud Creek, as shown in Appendix 2.

31. "Perennial Flowing Stream" means a stream that historically flowed and is currently flowing continuously during all seasons of the year including dry as well as wet years.

32. "Person(s)" means an individual or individuals or any other entity, public or private, including the State, the Tribes, and the government of the United States and all officers, agents, and departments thereof.

33. "Reservation" means the Fort Belknap Reservation and includes all lands and interests in lands which are now and in the future held in trust by the United States for the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation within the boundary established by the Treaty ratified by Congress on May 1, 1888, 25 Stat. 113, as modified by: The Grinnell Agreement of October 9, 1895 and ratified by Congress in 1896, 29 Stat. 350; and the Fort Belknap Allotment Act of March 3, 1921, 41 Stat. 1355.

34. "Same Source" means the same aquifer in reference to wells and developed springs of 35 gallons per minute or less that do not exceed a use of 10 Acre-feet per year.

35. "Secretary" means the Secretary of the United States Department of the Interior, or his or her duly authorized representative.

36. "Seniority of the Water Rights Set Forth in Sections B.1.a. and d. of this Article III Shall not be Asserted Over" means the senior water rights specified in Sections B.1.a. and d. of Article III shall be administered as subordinate to the junior water rights specified and referenced in Section B.2.a of Article III.

37. "State" means the State of Montana and all officers, agencies, departments, and political subdivisions thereof.

38. "Transfer" means, as applied to the Tribal Water Right, to authorize a Person or Persons to use all or any part of the Tribal Water Right through a service contract, lease, or other similar agreement of limited duration.

39. "Tribal Water Resources Department" or "TWRD" means the Fort Belknap Tribal Water Resources Department, or any successor agency.

40. "Tribal Water Right" means the right of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community, Tribal members, and Allottees within the Fort Belknap Reservation, to divert, use, or store water as described by Article III of this Compact.

41. "Tribes" means the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation and all officers, agencies, and departments thereof.

42. "Undepleted Flow" means the stream flow in a watershed without the effects of diminishment by water uses for specific beneficial purposes including, but not limited to, irrigation, municipal, domestic, mining, commercial, industrial, stockwatering, recreational, and environmental concerns.

43. "United States" means the federal government and all officers, agencies, and departments thereof.

44. "United States' Share of the Natural Flow of the Milk River" means the allocation to the United States of water in the Milk River and its tributaries pursuant to Article VI of the "Treaty Between the United States and Great Britain Relating to Boundary Waters, and Questions Arising Between the United States and Canada," January 11, 1909, and ratified by the Senate on May 13, 1910, 36 Stat. 2455, and the Order of the International Joint Commission on October 4, 1921, pertaining to "In the matter of the Measurement and Apportionment of the Waters of the St. Mary and Milk Rivers and their Tributaries in the State of Montana and the Provinces of Alberta and Saskatchewan."

45. "Water Bank" means a water purchasing mechanism whereby willing sellers are paid to forego use of a portion of their supplies in a year of water shortage, and purchased water is either stored or reallocated to meet specified needs.

46. "Western Crossing" means the most upstream location at which the mainstem of the Milk River crosses the 49th parallel to enter Canada from the United States.

ARTICLE III - TRIBAL WATER RIGHT

The Tribal Water Right set forth in this Article III shall be the water allocation in settlement of the claims including Winters reserved water rights claims of the Tribes, Tribal members, and Allottees, and the United States on behalf of the Tribes, Tribal members, and Allottees within the Fort Belknap Reservation, to water within the State of Montana, as those claims exist on the Effective Date of the Compact, and shall be held in trust by the United States for the benefit of the Tribes, Tribal members, and Allottees within the Fort Belknap Reservation. Non-use of all or any of the Tribal Water Right does not constitute a relinquishment, forfeiture, or abandonment of such rights.

A. **Basin 40J: Milk River Basin 40J.**

1. **Quantification.**

a. The Tribes have the right to divert up to 645 cubic feet per second "Cfs" of the United States' Share of the Natural Flow of the Milk River and its tributaries upstream from the diversion point on the Reservation as calculated pursuant to Section E.2. of Article IV. The right to divert 645 Cfs is in addition to allocation to the Tribes of storage in Fresno Reservoir pursuant to the Memorandum of Agreement between the Bureau of Reclamation and the Office of Indian Affairs (BIA) Milk River Project Montana, I-1-Ind. 18725, July 8, 1946.

(1) Of the right to divert 645 Cfs, up to 125 Cfs may be diverted for Direct Use to a maximum of 10,425 irrigated acres within the Fort Belknap Indian Irrigation Project. This water right is intended to preserve the historic water use protected in Winters v. United States, 207 U.S. 564 (1908). Irrigation of the Fort Belknap Indian Irrigation Project pursuant to this paragraph may be on land within the external boundaries of the Project on the Effective Date of the Compact or as modified pursuant to applicable federal law.

(2) Of the right to divert 645 Cfs and in addition to the 125 Cfs water right quantified in Section A.1.a.(1) of this Article III, up to 520 Cfs may be diverted for Direct Use or to off-stream storage, or both, for subsequent use for both of the following: use on an additional 19,390 present and future irrigated acres (including land irrigated historically within the Milk River Basin 40J); and up to 4000 AFY of use for non-irrigation purposes. The off-stream storage pursuant to this Section A.1.a.(2) of Article III is limited to a maximum combined capacity of 60,000 Acre-feet. Irrigation by diversion to Direct Use pursuant to this paragraph may be accomplished through expansion or modification of the Fort Belknap Indian Irrigation Project pursuant to applicable federal law.

b. In addition to the water rights set forth in Section A.1.a. of this Article III, the Tribes have the right to divert surface flow from tributaries to the Milk River on the Reservation in Basin 40J to irrigate the acreage identified in Section A.1.a.(1) and (2) of this Article III.

c. In addition to the water rights set forth in Sections A.1.a. and b. of this Article III, the Tribes have the right to develop surface water in the Milk River Basin 40J within the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream. The cumulative development of stock impoundments pursuant to this Section A.1.c., of Article III following the Effective Date of this Compact may not exceed a storage capacity of fifteen Acre-feet times the number of square miles in Basin 40J on the Reservation. This capacity limit does not apply to the water right quantified in Sections A.1.a., b., and d. of this Article III.

d. In addition to the water rights set forth in Sections A.1.a., b., and c. of this Article III, the Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact in the Milk River Basin 40J within the Reservation, provided that, any portion of this water right diverted from the mainstem of the Milk River shall be part of the 4000 AFY non-irrigation water right set forth in Section A.1.a.(2) of this Article III. These water uses are subject to the reporting requirements of Section A.7. of Article IV.

2. **Priority Date/Administrative Priority.**

a. For purposes of this Compact only, the priority date of the water rights set forth in Sections A.1.a., b., and d. of this Article III is October 17, 1855. The Parties agree that the senior water right quantified in Section A.1.a. of this Article III, shall be satisfied in the following manner:

(1) In the event that the water available for use by the Tribes at the diversion point on the Reservation is less than the amount to which the Tribes are entitled to pursuant to Section A.1.a. of this Article III and Section E.1.b.(2) of Article IV, the Tribes shall seek delivery of the difference between what they are entitled to and what is available solely from release or bypass of water from or through Fresno Dam by the Milk River Project. The Milk River Project shall, pursuant to Section E. of Article IV and applicable federal law, release or bypass the additional water necessary to fulfill the water right of the Tribes.

(2) The allocation between and relative priority of satisfaction of the water rights set forth in Section A.1.a. of this Article III and the water right of the Blackfeet Tribe in the Milk River Basin shall be resolved among the Fort Belknap Indian Community of the Fort Belknap Reservation, the Blackfeet Tribe, and the United States, or in the event an agreement is not reached, as ultimately decreed by the Montana Water Court or other court of competent jurisdiction, and shall not be prejudiced by this Compact including any agreement on priority date. The amount of the United States' Share of the Natural Flow of the Milk River available to the Tribes as calculated pursuant to Section E.2. of Article IV shall be modified to reflect any adjudication of the water rights of the Blackfeet Tribe or agreement between the Blackfeet Tribe and the Fort Belknap Indian Community of the Fort Belknap Reservation to the extent such agreement or adjudication affects the Calculated Undepleted Flow of the Milk River. The Milk River Project will not be required to provide any exchange water to the Tribes for diversion of the Blackfeet tribal water right.

b. The priority date of the water rights set forth in Section A.1.c. of this Article III for stock impoundments shall be the date of development of the right.

3. **Period of Use.** The period of use of the water rights set forth in Section A.1. of this Article III is:

a. March 1 through October 31 of each year for the 125 Cfs diversion set forth in Section A.1.a.(1) of this Article III.

b. January 1 through December 31 of each year for the 520 Cfs right set forth in Section A.1.a.(2) of this Article III.

c. March 1 through October 31 for water diverted from tributaries set forth in Section A.1.b. of this Article III.

d. January 1 through December 31 of each year for the water rights set forth in Section A.1.c. and d. of this Article III.

4. **Points and Means of Diversion.**

a. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section A.1.a. of this Article III may be diverted from the mainstem of the Milk River in the Milk River Basin 40J, or from Groundwater beneath the Reservation that is Hydrologically Connected to the surface water from any place and by any means in the Milk River Basin 40J.

b. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section A.1.b. of this Article III may be diverted for Direct Use from any place and by any means from tributaries to the Milk River in Basin 40J on the Reservation.

c. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section A.1.c. of this Article III may be developed from a surface water source anywhere within the Milk River Basin 40J within the Reservation, provided that, the development may not be on a Perennial Flowing Stream.

d. Subject to the terms and conditions set forth in Article IV, the water rights set forth in Section A.1.d. of this Article III may be diverted from any place and by any means in Basin 40J from surface water or Groundwater that is Hydrologically Connected to surface water, within the Reservation in Basin 40J.

5. **Place of Use.**

a. Subject to the terms and conditions set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Sections A.1.a. and b. of this Article III any place within the Reservation.

b. Subject to the terms and conditions of Article IV, the Tribes may transfer water developed (pursuant to Section A.1.a. of this Article III) prior to the date of application for a Change in Use or Transfer or stored (pursuant to Section A.1.a.(2) of this Article III) prior to the date of application for a Change in Use or Transfer for use off the Reservation within the Missouri River Basin.

c. The Tribes may use or authorize the use of the water rights set forth in Sections A.1.c. and d. of this Article III any place within the Reservation.

6. **Purposes.**

a. The water rights set forth in Sections A.1.a. and b. of this Article III may be used within the Reservation for any purpose allowed by Tribal and federal law, including fish and wildlife purposes, provided that, Non-Exempt New Development, Change in Use, or Transfer of any portion of the Tribal Water Right, is subject to the terms and conditions of Section A. of Article IV

b. The water rights set forth in Section A.1.c. of this Article III may be used for the purpose of watering stock and may not be changed to any other use.

c. The water rights set forth in Section A.1.d. of this Article III may be used within the Reservation in Basin 40J for any non-irrigation purposes.

B. **Basin 40I: Peoples Creek Basin.**

1. **Quantification.**

a. The Tribes have the right to the surface water and Groundwater that is Hydrologically Connected to surface water that remains in the Peoples Creek Basin within the Reservation after satisfaction of water rights Arising Under State Law set forth in Appendix 3. The Tribes have the right to store water within the Peoples Creek Basin pursuant to this water right. The reservoir or reservoirs must be entirely within the Reservation unless otherwise agreed to with affected landowners off the Reservation.

b. In addition to the water rights set forth in Section B.1.a. of this Article III, the Tribes' right to use water in the Peoples Creek Basin includes the right to use water conveyed from the Missouri River Basin 40EJ pursuant to Section E.1.b. of this Article III. The Tribes have the right to store water within the Peoples Creek Basin pursuant to this water right. The reservoir or reservoirs must be entirely within the Reservation unless otherwise agreed to with affected landowners off the Reservation.

c. In addition to the water rights set forth in Sections B.1.a. and b. of this Article III, the Tribes have the right to develop surface water in the Peoples Creek Basin within the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream. The cumulative development of stock impoundments pursuant to this Section B.1.c., of this Article III following the Effective Date of this Compact may not exceed a storage capacity of fifteen Acre-feet times the number of square miles in Basin 40I on the Reservation. This capacity limit does not apply to the water right quantified in Sections B.1.a., b., and d. of this Article III.

d. In addition to the water rights set forth in Sections B.1.a., b., and c. of this Article III, the Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact in the Peoples Creek Basin within the Reservation. These water uses are subject to the reporting requirements of Section A.7. of Article IV.

2. **Priority Date/Administrative Priority.**

a. For purposes of this Compact, the priority date of the water rights set forth in Sections B.1.a. and d. of this Article III is October 17, 1855. For the purposes of providing a more reliable water right and simplification of administration, the Parties agree that this senior water right shall be satisfied in the following manner:

(1) Subject to the terms of Section B.2.a.(2) of this Article III, the Seniority of the Water Rights Set Forth in Sections B.1.a. and d. of this Article III Shall Not be Asserted Over non-irrigation water rights Arising Under State Law upstream from the Reservation in the Peoples Creek Basin with a priority date before the Effective Date of the Compact, and irrigation water rights set forth in Appendix 3, provided that water rights numbers W017296, W166075, and C016704 are not protected by this agreement. The Tribes may assert the senior priority of water rights and storage that have been actually developed over water rights Arising Under State Law that are developed after the Effective Date of this Compact, and over any water rights Arising Under State Law not set forth in Appendix 3.

(2) The agreement set forth in Section B.2.a.(1) of this Article III is not effective until completion of construction of a reservoir or reservoirs of a minimum capacity of 3000 AF on the Reservation in upper Peoples Creek for use by the Tribes. Prior to construction of the reservoir, the Tribes may only assert the senior priority of water rights actually developed.

b. The priority date of the water right set forth in Section B.1.b. of this Article III shall be as set forth in Section E.2.b. of this Article III.

c. The priority date of the water rights set forth in Section B.1.c. of this Article III for stock impoundments shall be the date of development of the right.

3. **Period of Use.** The period of use of the water rights set forth in Section B.1. of this Article III is January 1 through December 31 of each year.

4. **Points and Means of Diversion.**

a. The water right set forth in Sections B.1.a. and d. of this Article III may be diverted for Direct Use or storage from surface water or from Groundwater that is Hydrologically Connected to surface water from any place and by any means within the Peoples Creek Basin within the Reservation.

b. The point and means of diversion of the water right set forth in Section B.1.b. of this Article III shall be as set forth in Section E.4.b. of this Article III.

c. The water right set forth in Section B.1.c. of this Article III may be developed on a surface water source anywhere within the Peoples Creek Basin within the Reservation, provided that, the development may not be on a Perennial Flowing Stream.

5. **Place of Use.**

a. The Tribes may use or authorize the use of the water rights set forth in Sections B.1.a. and b. of this Article III for use any place within the Reservation within the Peoples Creek Basin. Subject to the terms and conditions set forth in Article IV, the Tribes may Transfer water stored pursuant to Sections B.1.a. and b. of this Article III for use off the Reservation within the Milk River Basin.

b. The Tribes may use or authorize the use of the water rights set forth in Sections B.1.c., and d. of this Article III for use any place within the Reservation.

6. **Purposes.**

a. The water rights set forth in Sections B.1.a. and b. of this Article III may be used for any purpose allowed by Tribal and federal law, including fish and wildlife purposes, provided that, any Transfer of the water rights stored pursuant to Sections B.1.a. and b. of this Article III off the Reservation, after the Effective Date of the Compact is subject to the terms and conditions of Section A. of Article IV.

b. The water rights set forth in Section B.1.c. of this Article III may be used for the purpose of watering stock and may not be changed to any other use.

c. The water rights set forth in Section B.1.d. of this Article III may be used within the Reservation in Basin 40I for any non-irrigation purposes.

C. **Basin 40M: Beaver Creek Basin.**

1. **Quantification.**

a. The Tribes have the right to divert 8,024 AFY for irrigation of 2,241 acres from surface flow, or from Groundwater that is Hydrologically Connected to surface flow, within the Reservation in the Beaver Creek Basin. The Tribes agree to use their best efforts to bypass a minimum flow when naturally available.

b. In addition to the water rights set forth in Section C.1.a. of this Article III, the Tribes have the right to develop surface water in the Beaver Creek Basin within the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream. The cumulative development of stock impoundments pursuant to this Section C.1.b., of this Article III following the Effective Date of this Compact may not exceed a storage capacity of 15 Acre-feet times the number of square miles in Basin 40M on the Reservation. This capacity limit does not apply to the water right quantified in Sections C.1.a. and c. of this Article III.

c. In addition to the water rights set forth in Sections C.1.a. and b. of this Article III, the Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact in the Beaver Creek Basin within the Reservation. These water uses are subject to the reporting requirements of Section A.7. of Article IV.

2. **Priority Date/Administrative Priority.**

a. For purposes of this Compact, the priority date of the water rights set forth in Sections C.1.a. and c. of this Article III is October 17, 1855.

b. The priority date of the water rights set forth in Section C.1.b. of this Article III for stock impoundments shall be the date of development of the right.

3. **Period of Use.** The period of use of the water rights set forth in Section C.1. of this Article III is:

a. March 1 through October 31 for the 8,024 AFY water right set forth in Section C.1.a. of this Article III.

b. January 1 through December 31 of each year for the water rights set forth in Sections C.1.b. and c. of this Article III.

4. **Points and Means of Diversion.**

a. Subject to the terms and conditions set forth in Article IV, the Tribes may divert or authorize the diversion of the water rights set forth in Sections C.1.a. and c. of this Article III from any place and by any means from surface water or Groundwater that is Hydrologically Connected to surface water in the Beaver Creek Basin within the Reservation. When constructing diversion facilities, the Tribes agree to use their best efforts to allow bypass of a minimum flow, when naturally available.

b. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section C.1.b. of this Article III may be developed on a surface water source anywhere within the Beaver Creek Basin within the Reservation, provided that, the development may not be on a Perennial Flowing Stream.

5. **Place of Use.** Subject to the terms and conditions set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Sections C.1.a., b., and c. of this Article III any place within the Reservation within the Beaver Creek Basin.

6. **Purposes.**

a. The Tribes may use or authorize the use of the water rights set forth in Section C.1.a. of this Article III within the Reservation for any purpose allowed by Tribal and federal law, including fish and wildlife purposes, provided that, use of the water rights set forth in Section C.1.a. of this Article III, for any purpose other than irrigation is subject to the terms and conditions of Section A. of Article IV.

b. The water rights set forth in Section C.1.b. of this Article III may be used for the purpose of watering stock and may not be changed to any other use.

c. The water rights set forth in Section C.1.c. of this Article III may be used within the Reservation in the Beaver Creek Basin for any non-irrigation purposes.

D. **Reservation Portion of Missouri River Basin 40EJ.**

1. **Quantification.**

a. The Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact in Basin 40EJ within the Reservation. These water uses are subject to the reporting requirements of Section A.7. of Article IV.

b. In addition to the water rights set forth in Section D.1.a. of this Article III, the Tribes have the right to develop surface water in Basin 40EJ within the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream.

2. **Priority Date/Administrative Priority.**

a. For purposes of this Compact, the priority date of the water rights set forth in Section D.1.a. of this Article III is October 17, 1855.

b. The priority date of the water rights set forth in Section D.1.b. of this Article III for stock impoundments shall be the date of development of the right.

3. **Period of Use.** The period of use of the water rights set forth in Section D.1. of this Article III is January 1 through December 31 of each year.

4. **Points and Means of Diversion.**

a. Subject to the terms and conditions set forth in Article IV, the Tribes may continue to divert or authorize the diversion of the water rights set forth in Section D.1.a. of this Article III from any place and by any means from surface water or Groundwater that is Hydrologically Connected to surface water, within the Reservation in Basin 40EJ.

b. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section D.1.b. of this Article III may be developed on a surface water source anywhere within Basin 40EJ within the Reservation, provided that, the development may not be on a Perennial Flowing Stream.

5. **Place of Use.** Subject to the terms and conditions set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Section D.1. of this Article III on any place within the Reservation within Basin 40EJ.

6. **Purposes.**

a. The Tribes may use or authorize the use of the water rights set forth in Section D.1.a. of this Article III for any non-irrigation purposes.

b. The water rights set forth in Section D.1.b. of this Article III may be used for the purpose of watering stock and may not be changed to any other use.

E. **Off-Reservation Tribal Fee and Trust Lands - Missouri Basin 40EJ and Peoples Creek Basin 40I.** The Tribes have the following water rights on trust and fee land off the Reservation in Missouri Basin 40EJ and Peoples Creek Basin 40I. Unless Congress acts to modify the Reservation boundary to include the Tribal trust and fee land, the rights shall not be considered part of the Tribal Water Right for purposes of administration pursuant to Article IV. The water rights set forth in this Section E. of Article III shall be administered by the State pursuant to Section B.1.b. of Article IV, except that non-use of all or any of the rights shall not constitute a relinquishment, forfeiture, or abandonment of such rights.

1. **Quantification.**

a. The Tribes have the right to divert up to 1135 AFY for irrigation of:

(1) 297 acres of land historically irrigated in Basin 40EJ; and

(2) 18 acres of land in Basin 40EJ developed after the Effective Date of the Compact.

b. In addition to the water rights set forth in Section E.1.a. of this Article III, the Tribes have the right to divert up to 1290 AFY for conveyance to the Peoples Creek Basin.

c. In addition to the water rights set forth in Sections E.1.a. and b. of this Article III, the Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact on Tribal fee and trust land off the Reservation in Basin 40EJ and Basin 40I. These water uses are subject to the reporting requirements of Section A.7. of Article IV.

d. In addition to the water rights set forth in Sections E.1.a., b., and c. of this Article III, the Tribes have the right to develop surface and Groundwater in Basin 40EJ and Basin 40I on Tribal fee and trust land off the Reservation pursuant to State law.

e. In addition to the water rights set forth in Sections E.1.a., b., c., and d. of this Article III, the Tribes have the right, pursuant to State law, to develop surface water in Basin 40EJ and Basin 40I on Tribal fee and trust land off the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream.

2. **Priority Date/Administrative Priority.**

a. The priority date of the water rights set forth in Section E.1.a. of this Article III is:

(1) July 24, 1893 for the water right set forth in Section E.1.a.(1) of this Article III.

(2) The date of development for the 18 acres set forth in Section E.1.a.(2) of this Article III.

b. The priority date of the water right set forth in Section E.1.b. of this Article III is January 1, 1935.

c. The priority dates of the water rights set forth in Section E.1.c. of this Article III are the date on which the water was developed for stock and domestic purposes. The priority date of these rights is subject to the reporting requirements of Section A.7. of Article IV.

d. The priority date of the water rights set forth in Sections E.1.d., and e. of this Article III shall be as provided by State law.

3. **Period of Use.** The period of use of the water rights set forth in Section E.1. of this Article III is:

a. March 1 through October 31 of each year for the irrigation water rights set forth in Section E.1.a. of this Article III.

b. January 1 through December 31 of each year for diversion of the water right set forth in Section E.1.b. of this Article III.

c. January 1 through December 31 of each year for the water rights set forth in Section E.1.c. of this Article III.

d. As provided by State law for the water rights set forth in Sections E.1.d., and e. of this Article III.

4. **Points and Means of Diversion.**

a. The points and means of diversion for the water rights set forth in Section E.1.a. of this Article III are as follows:

(1) The water right set forth in Section E.1.a.(1) of this Article III may be diverted from any point by any means on Tribal trust or fee land within Section 30, T28N, R22E and the SW 1/4 of Section 18, T27N, R22E;

(2) The water right set forth in Section E.1.a.(2) of this Article III may be diverted from any point by any means on Tribal trust or fee land within Section 19, T27N, R22E.

b. The water right set forth in Section E.1.b. of this Article III may be diverted from any point by any means on Tribal trust or fee land in the SWSESW, Section 9, T26N, R22E.

c. The water rights set forth in Section E.1.c. of this Article III may be diverted from the place and by the means in use prior to the Effective Date of the Compact, on Tribal fee or trust land in Basin 40EJ and Basin 40I. Subject to the terms and conditions of Section B. of Article IV, the Tribes may change the point and means of diversion of a water right set forth in Section E.1.c. of this Article III to any place and any means from surface or Groundwater that is Hydrologically Connected to surface water, on Tribal fee or trust land in Basin 40EJ or Basin 40I.

d. The water right set forth in Sections E.1.d. and e. of this Article III may be diverted from any point by any means on Tribal fee or trust land in Basin 40EJ and Basin 40I, pursuant to State law.

5. **Place of Use.**

a. The Tribes may use the water rights set forth in Section E.1.a.(1) of this Article III on Tribal trust or fee land in Sections 29, 30, 31, and 32, T28N, R22E, and on the W1/2 of the SE1/2 and the E1/2 of the W1/2 of Section 19, T27N, R22E. The Tribes may use the water rights set forth in Section E.1.a.(2) of this Article III on Tribal trust or fee land in Sections 19 and 30, T27N, R22E.

b. The water rights set forth in Section E.1.b. of this Article III may be used any place authorized in Section B.5.a. of this Article III, and shall be administered as part of the Tribal Water Right.

c. Subject to the requirements of State law, the water rights set forth in Section E.1.c. of this Article III may be used any place on Tribal fee or trust land in Basin 40EJ and Basin 40I on which the water has been used prior to the Effective Date of the Compact.

d. The water rights set forth in Sections E.1.d. and e. of this Article III may be used on any Tribal fee and trust land in Basin 40EJ and Basin 40I, pursuant to State law.

6. **Purposes.**

a. The water rights set forth in Section E.1.a. of this Article III may be used for irrigation. Subject to the terms and conditions of Section B. of Article IV, the Tribes may change the use of the water rights set forth in Section E.1.a. of this Article III to any other purpose allowed by State law.

b. The water rights set forth in Section E.1.b. of this Article III may be used for any purpose allowed by federal and Tribal law.

c. The water rights set forth in Section E.1.c. of this Article III may continue to be used for stock and domestic purposes according to their purpose on the Effective Date of the Compact. Subject to the terms and conditions of Section B. of Article IV, the Tribes may change the use of the water rights set forth in Section E.1.c. of this Article III to any other purpose allowed by State law.

d. The water rights set forth in Sections E.1.d., and e. of this Article III may be used for any purpose allowed by State law.

F. **Temporary Emergency Appropriations.** The Tribes or the United States on behalf of the Tribes may divert water from sources on the Reservation for use on or off the Reservation for temporary emergency use necessary for public health and safety. Temporary emergency use of water from a source for which a water right is quantified in this Article III of this Compact shall not be considered an exercise of that right.

G. **Groundwater.**

1. **Groundwater that is Hydrologically Connected to Surface Water.** The Tribes have the right to develop Groundwater that is Hydrologically Connected to surface water within the quantification limits for surface water provided in Sections A., B., C., D., and E. of this Article III. The attributes of the water right are as set forth in Sections A., B, C., D., and E. of this Article III.

2. **Existing Groundwater Development.**

a. **Quantification.** The Tribes have the right to the use of Groundwater developed before the Effective Date of the Compact within the Reservation as provided in Sections A.1.d., B.1.d., C.1.c., and D.1.a. of this Article III. These Groundwater uses are subject to the reporting requirements of Section A.7. of Article IV.

3. **New Development of Small Groundwater Wells and Springs.**

a. **Quantification.** In addition to the water rights set forth in Sections A., B., C., and D., of this Article III, the Tribes have the right to develop Groundwater within the Reservation by means of wells or developed springs if the maximum flow of each well or developed spring is 35 gallons per minute or less and does not exceed a use of 10 Acre-feet per year. This size limitation includes a Combined Development from the Same Source from two or more wells or developed springs.

b. **Priority Date/Administrative Priority.**

The priority date of the water rights set forth in Section G.3.a. of this Article III shall be the date of development of the right.

c. **Period of Use.** The period of use of the water rights set forth in Section G.3.a. of this Article III is January 1 through December 31 of each year.

d. **Points and Means of Diversion.** Subject to the terms and conditions set forth in Article IV, the water right set forth in Section G.3.a. of this Article III may be diverted from Groundwater from any point by any means within the Reservation.

e. **Place of Use.** Subject to the terms and conditions set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Section G.3.a. of this Article III any place within the Reservation.

f. **Purposes.** Subject to the terms and conditions set forth in Article IV, the water rights set forth in Section G.3.a. of this Article III may be used for any purpose authorized by Tribal or federal law.

4. **New Groundwater Development not Hydrologically Connected to Surface Water.**

a. **Quantification.** In addition to the water rights set forth in Sections A., B., C., D., and E. of this Article III, the Tribes have the right to develop or authorize the development of Groundwater within the Reservation that is not Hydrologically Connected to surface water subject to the following conditions:

(1) The development of Groundwater that is not Hydrologically Connected to surface water must comply with the provisions of Sections A.5. and 6. of Article IV for determination of Adverse Effect. Pursuant to Section A.5.a. of Article IV, the Tribal Water Resources Department and the DNRC may jointly agree to exempt certain development of Groundwater from a showing of no Adverse Effect due to location, size, or other agreed upon parameter.

(2) If a conflict arises between use of the water right set forth in this Section G.4. of Article III and a water right Arising Under State Law, DNRC and TWRD shall attempt to resolve the controversy. In attempting to resolve the controversy, DNRC and TWRD may establish controlled Groundwater areas off and on the Reservation and may manage them cooperatively pursuant to Sections A.2.d. and B.2. of Article IV. If DNRC and TWRD are unable to resolve the controversy, the Tribes, State or the Person whose water use is affected may seek relief from the

Compact Board. Among the remedies the Compact Board may order is imposition of a controlled Groundwater area that includes Groundwater use both on and off the Reservation pursuant to Sections A.2.d. and B.2. of Article IV. The controlled Groundwater area is to be administered by the TWRD on the Reservation and the DNRC off the Reservation pursuant to Article IV and Tribal and State law.

b. **Priority Date.** The priority date of the water rights set forth in Section G.4.a. of this Article III for new Groundwater development shall be the date of development of the right.

c. **Period of Use.** The period of use of the water rights set forth in Section G.4.a. of this Article III for new Groundwater development is January 1 through December 31 of each year.

d. **Points and Means of Diversion.** Subject to the requirements set forth in Article IV, the water rights set forth in Section G.4.a. of this Article III may be diverted from Groundwater that is not Hydrologically Connected to surface water at any point by any means within the Reservation.

e. **Place of Use.** Subject to the requirements set forth in Article IV, the water rights set forth in Section G.4.a. of this Article III may be used on any place within the Reservation.

f. **Purpose.** Subject to the requirements set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Section G.4.a. of this Article III for any purpose allowed by Tribal and federal law.

H. **Additional Water.** As a part of the Tribal Water Right, the Tribes shall be entitled to an allocation of stored water in Lake Elwell as agreed to by the Parties and as provided by Congress, measured at the dam, for use or disposition by the Tribes for any beneficial purpose, either on or off the Reservation, pursuant to the terms of this Compact; provided that, such allocation shall be in accordance with the terms and conditions of any Act of Congress ratifying this Compact. This allocation is subject to the prior reserved water rights, if any, of any other Indian tribe, or persons holding such reserved water rights through that tribe or through the United States. Any use or disposition of water from Lake Elwell off the Reservation by the Tribes is subject to the specific provisions relating to such use or disposition in any Act of Congress ratifying this Compact. The United States shall have no responsibility or obligation to provide any facility for the transport of the water allocated under this Section H. of Article III. to the Fort Belknap Reservation or to any other location.

I. **Basin Closures.**

1. The following closure does not apply to development of the Tribal Water Right as provided for in this Compact. In the Milk River Basin from the Eastern Crossing to the confluence between the Milk River and the Missouri River comprised of Basins 40F, 40G, 40H, 40I, 40J, 40K, 40L, 40M, 40N, and 40O both above the Western Crossing and below the Eastern Crossing, DNRC shall not process or grant an application for an appropriation pursuant to State law after this Compact has been ratified by the Montana legislature, provided that, after compliance by the applicant with all applicable provisions of State and federal law, DNRC may issue a certificate of water right or permit for:

a. An appropriation for municipal use of surface or Groundwater that is Hydrologically Connected to surface water. In addition to compliance with applicable State law, the application shall be treated as a change in use for the purposes of Section B. of Article IV, if the point of diversion is located upstream from any point on the Reservation. For purposes of compliance with State law other than this Compact, the appropriation shall be treated as a new use.

b. An appropriation of Groundwater that is not Hydrologically Connected to surface water. In addition to compliance with applicable State law, the application shall be treated as a change in use for the purposes of Section B. of Article IV, if the point of diversion is within an aquifer that might extend onto the Reservation. For purposes of compliance with State law other than this Compact, the appropriation shall be treated as a new use.

c. An appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a use of 10 Acre-feet per year. This size limitation includes a Combined Development from the Same Source from two or more wells or developed springs. This exemption includes development on fee land on the Reservation.

d. An appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 Acre-feet and the appropriation is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream. This exemption includes development on fee land on the Reservation. With the exception of Peoples Creek Basin 40I, the cumulative development of stock impoundments pursuant to this exemption following the Effective Date of this Compact may not exceed a storage capacity of 15 Acre-feet times the number of square miles in the Water Court basin in which the new impoundment is located. In the Peoples Creek Basin 40I, development of stock impoundments pursuant to this exemption following the Effective Date of this Compact must be constructed with the ability to bypass inflow.

e. An appropriation for instream use of water by livestock.

f. Temporary emergency appropriations as provided in § 85-2-113(3), MCA.

g. An appropriation necessary for the purposes of new storage of imported water or modification and replacement of existing storage as set forth in Section I.4. of this Article III.

h. An appropriation necessary for new storage off the Reservation approved by the Milk River Coordinating Committee pursuant to Section C.3.g. of Article IV.

i. An appropriation for a nonconsumptive use as defined under State law.

j. With the exception of applications for appropriations in Basin 40I upstream from the Reservation, an appropriation of water for an impoundment of any size for use for fish and wildlife purposes if the cumulative development under this provision and Section I.1.d. of this Article III, does not exceed 15 Acre-feet times the number of square miles owned by the applicant in the Water Court basin in which the new impoundment is located.

2. The basin closure is not a limit on change of use or transfer of any water right Arising Under State Law, provided that, applicable provisions of State and federal law and this Compact are followed. For purposes of this Compact, any change in a water right for the purpose of moving instream stockwatering to off-stream stockwatering that does not result in an increase in the historic consumptive use of water shall be considered a change in use, and is not a new use subject to the basin closure.

3. Due to the shortage of water in the Milk River Basin, water salvaged through efficiency measures may not be used to expand irrigation from a water right Arising Under State Law with a point of diversion in the United States' portion of the Milk River Basin under the following circumstances:

a. the efficiency measures are funded in whole or in part by the State, United States, Tribes, or water users as part of the implementation of this Compact; or

b. the salvaged water may be used to alleviate water shortage in the Milk River Basin. Pursuant to Section B.3. of Article IV, DNRC may promulgate rules to implement this provision.

4. The basin closure is not a limit on: the modification or replacement of existing storage when there is no enlargement of that storage; the modification or development of storage pursuant to this Compact and the federal legislation that ratifies this Compact; or the development of storage to impound water imported to the Milk River Basin from another basin.

5. Within 120 days of the date this Compact is ratified by the Montana Legislature, DNRC shall publish notice of the basin closures set forth in Section I. of this Article III once in newspapers of general circulation in the area of the sources.

ARTICLE IV - IMPLEMENTATION OF COMPACT

A. Tribal Administration.

1. Tribal Authority Over Tribal Water Right.

a. The Tribes have the right, subject to the limits imposed by this Compact (including Sections C., D., and E. of this Article IV, and Section B.3. of Article VII), and federal law (including 25 U.S.C. § 381), to administer the use of the Tribal Water Right.

b. Once the Tribal Water Right is diverted to the facilities of the Fort Belknap Indian Irrigation Project on units held by the United States, distribution shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs or its successor in accordance with applicable federal laws. Operation and maintenance of the Fort Belknap Indian Irrigation Project shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs or its successor in accordance with applicable federal laws.

c. Once the Tribal Water Right is diverted to the facilities of the Ereaux Unit, and any other unit previously part of the Fort Belknap Indian Irrigation Project which has been subsequently quit claimed by the United States to specific irrigation companies, distribution shall be conducted by the irrigation companies. Administration of the Tribal Water Right to the points of diversion of the listed irrigation projects shall be conducted by the Tribes on Peoples Creek and other tributaries to the Milk River on the Reservation, and pursuant to Sections C., D., and E., of this Article IV, and Section B.3. of Article VII on the mainstem of the Milk River.

d. Owners of fee land within the Reservation may apply to the Tribes to continue their historic use of water in the manner and to the extent existing on the Effective Date of the Compact on fee land within the Reservation as determined by the TWRD pursuant to the Tribal water code as part of the Tribal Water Right if no claim was filed by the landowner in the state adjudication, or may continue their use pursuant to state law and as decreed by state court if a claim was filed.

2. **Tribal Water Code.** Administration of the Tribal Water Right by the Tribes shall be pursuant to a comprehensive Tribal water code governing the Tribal Water Right set forth in this Compact. Pending the adoption of the Tribal water code, the administration of the Tribal Water Right shall be by the Secretary of the Interior. The Tribal water code shall be developed and adopted by the Tribes with approval by the Secretary within two (2) years following the Effective Date of this Compact and shall include:

a. A process by which any Tribal member or Allottee may request and be provided with an equitable distribution of water for use on his or her trust lands.

b. A process for notice and a right to be heard for the consideration and determination of any request by a Tribal member or Allottee for an equitable distribution of water, including a process for formal review of denied or disputed distributions and for resolution of contested administrative decisions.

c. A process by which an owner of fee land within the boundaries of the Reservation may apply for use of a portion of the Tribal Water Right.

d. A process for establishment of a controlled Groundwater area and for management of such Area in cooperation with establishment of a contiguous controlled Groundwater area off the Reservation established pursuant to Section B.2. of this Article IV and State law.

3. **Persons Authorized to Use the Tribal Water Right.** The Tribal Water Right may be used by the Tribes, or Persons authorized by the Tribes (including Tribal members, Allottees, and holders of fee land within the boundaries of the Fort Belknap Reservation).

4. **Authorization for New Development of the Tribal Water Right.** Subject to Article III and the following conditions, the Tribes may use or authorize the use of the Tribal Water Right within the Reservation for any purpose allowed by this Compact and Tribal and federal law:

a. Impact of new development of the Tribal Water Right within the Reservation for the purposes of irrigation and non-irrigation use as expressly identified under the quantification in Article III, and new development for any purpose within the Reservation within the Peoples Creek Basin, have been accounted for in design of mitigation and administration in the Compact. Thus, new development for the purposes expressly identified in Article III within the Reservation and all new development within the Reservation within the Peoples Creek Basin are exempt from any review by DNRC under the process set forth in Sections A.5. and 6. of this Article IV. All such development will be referred to as "Exempt New Development." Specifically, Exempt New-Development is as follows:

(1) Use of the Tribal Water Right for purposes of irrigation with the place of use on the Reservation and as set forth in Article III.

(2) Use of up to 4000 AFY of water diverted from the Milk River pursuant to Section A.1.a.(2) of Article III for non-irrigation purposes on the Reservation.

(3) Use of the Tribal Water Right quantified for the Peoples Creek Basin within the Reservation for any purpose allowed by Tribal or federal law.

(4) Use of the Tribal Water Right for stockwatering on the Reservation if the maximum capacity of the impoundment or pit is less than 15 Acre-feet and the appropriation is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream.

(5) Use of Groundwater on the Reservation that is Hydrologically Connected to surface water by means of a well or developed spring with an appropriation of 35 gallons per minute

or less, and a use that does not exceed 10 Acre-feet per year. This size limitation includes a Combined Development from the Same Source from two or more wells or developed springs.

b. Any Tribal authorization for the development of Groundwater that is not Hydrologically Connected to surface water by means of a well or developed spring with an appropriation of greater than 35 gallons per minute, or in excess of 10 Acre-feet per year, developed after the Effective Date of this Compact, shall not have an Adverse Effect on water rights Arising Under State Law with a priority date before the date of the application for Groundwater development. The development is considered a Non-Exempt New Development and is subject to the procedures set forth in Sections A.5. and 6. of this Article IV.

5. **Non-Exempt New Development, Change in Use, or Transfer of the Tribal Water Right.** Subject to the following conditions, the Tribes may make or authorize a Non-Exempt New Development, Change in Use, or Transfer of the Tribal Water Right.

a. A Non-Exempt New Development, Change in Use, or Transfer of the Tribal Water Right on or off the Reservation may not Adversely Affect a water right Arising Under State Law with a priority date before the date of the application to the TWRD for the Non-Exempt New Development, Change in Use, or Transfer. Determination of Adverse Effect for the purposes of this Section shall be pursuant to the procedures set forth in Section A.6. of this Article IV and Appendix 5. In addition, the TWRD and DNRC may jointly agree to exempt certain Change in Use, Transfer or Non-Exempt New Development from a showing of no Adverse Effect due to location, size, or other agreed upon parameter.

b. Off Reservation Change in Use or Transfer of the Tribal Water Right is limited as follows:

(1) Off Reservation use of the Tribal Water Right on non-Tribal land shall be limited to the following portion of the Tribal Water Right developed or stored prior to the date of application for Change in Use or Transfer:

(a) Water developed by Direct Use prior to the date of the application for Change in Use or Transfer from the Milk River pursuant to Section A.1.a. of Article III; or

(b) Water stored from the Milk River pursuant to Section A.1.a.(2) of Article III.

(c) Water stored from Peoples Creek pursuant to Sections B.1.a., and b. of Article III.

(2) The off-Reservation new development, Change in Use, or Transfer of the transferable portion of the Tribal Water Right set forth in Section A.1.a. of Article III is limited to a place of use within the Missouri River Basin.

(a) If the Tribes receive a good faith offer from a Person for Transfer of a portion of the Tribal Water Right outside the Milk River Basin, the Tribes shall allow water users receiving water from the Milk River Project the first opportunity, and other water users in the Milk River Basin the second opportunity, to acquire use of such rights at a price consistent with the market value of water within the Milk River Basin at the time of the offer.

(b) The Tribes are not required to offer the first or second right to use a portion of the Tribal Water Right to any water user in the Milk River Basin who is currently marketing a portion of their own water right.

(3) The off-Reservation new development, Change in Use, or Transfer of the transferable portion of the Tribal Water Right set forth in Sections B.1.a., and b. of Article III is limited to a place of use within the Milk River Basin.

(4) The off-Reservation new development, Change in Use, or Transfer of the portion of the Tribal Water Right set forth in Section H. of Article III is limited to a place of use in the Missouri River Basin.

(5) Any off-Reservation Change in Use or Transfer of a portion of the Tribal Water Right may not exceed a term of 100 years, but may include provisions authorizing renewal for an additional term not to exceed 100 years.

(6) No off-Reservation Change in Use or Transfer of a portion of the Tribal Water Right may permanently alienate the water right.

(7) The development or use of the Tribal Water Right pursuant to an off-Reservation new development, Change in Use, or Transfer must comply with State law, provided that, approval of an application for a change in water right by DNRC shall be conditioned on a valid Tribal approval for such use, Change in Use or Transfer. Due to this requirement of compliance with State law, the off-Reservation Change in Use or Transfer shall be exempt from the process set forth in Section A.6. of this Article IV. Any diversion of the Tribal Water Right located off

the Reservation for use on the Reservation shall not be considered an off-Reservation use for purposes of this provision.

(8) The Tribes or any Person using diversion or transportation facilities located off the Reservation in connection with a use of the Tribal Water Right shall apply for and obtain all permits, certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water, prior to exercising a use of the Tribal Water Right off the Reservation.

6. **Administrative Procedure for Determination of Adverse Effect for Non-Exempt New Development, Change in Use, or Transfer, Within the Reservation.**

a. The procedures set forth in Sections A.6.b. through i. of this Article IV apply to determine whether the following actions will Adversely Affect a water right Arising Under State Law and must be followed before a Person may seek relief from the Compact Board:

(1) A Change in Use or Transfer of the Tribal Water Right; and

(2) A Non-Exempt New Development of the Tribal Water Right.

b. The proposal for a Non-Exempt New Development, Change in Use, or Transfer of a portion of the Tribal Water Right after the Effective Date of this Compact shall be made to TWRD.

c. TWRD shall review the proposal and make a determination of whether it will Adversely Affect a water right Arising Under State Law with a priority date before the date of the proposal for the Non-Exempt New Development, Change in Use, or Transfer.

(1) Upon request, DNRC shall provide to TWRD information on water rights Arising Under State Law as recorded in the DNRC database.

(2) For purposes of determining whether a Non-Exempt New Development of surface water Adversely Affects a water right Arising Under State Law, the existing use shall be deemed to be the use for which the water right is quantified explicitly in Article III of this Compact.

(3) If TWRD determines that the Non-Exempt New Development, Change in Use, or Transfer will Adversely Affect a water right Arising Under State Law with a priority date before the date of the proposal for the Non-Exempt New Development, Change in Use, or Transfer, TWRD shall deny the proposal, provided that, the Tribal water code may allow the applicant to modify the proposal to eliminate Adverse Affect.

(4) If TWRD determines that the Non-Exempt New Development, Change in Use, or Transfer will not Adversely Affect a water right Arising Under State Law with a priority date before the date of the proposal for the Non-Exempt New Development, Change in Use, or Transfer, TWRD shall forward the proposal with its determination to DNRC by certified mail with return receipt requested.

d. Upon receipt of notice from the TWRD, DNRC shall publish notice of the proposed Non-Exempt New Development, Change in Use, or Transfer, once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any holder of a water right Arising Under State Law who, according to the records of the DNRC, has a water right with a priority date before the date of the proposal that may be affected by the proposed Non-Exempt New Development, Change in Use, or Transfer. DNRC shall notify TWRD of the date of publication of notice.

e. A holder of a water right Arising Under State Law who objects to the proposed Non-Exempt New Development, Change in Use, or Transfer on the basis that it will Adversely Affect the exercise of their water right may notify DNRC, and must do so within thirty (30) days of the publication of notice.

f. DNRC shall review the proposal and the determination by TWRD of no Adverse Effect and any objections raised pursuant to Section A.6.e. of this Article IV. In its review, DNRC shall apply the same principles used in a determination of adverse effect or adverse affect pursuant to the Water Use Act, Title 85, Chapter 2, MCA, and Appendix 5. Any Non-Exempt New Development, Change in Use, or Transfer of the Tribal Water Right to a place of use and point of diversion within the Reservation that is within the minimum depletions set forth in Appendix 5 shall be presumed by DNRC to have no Adverse Effect. The TWRD may provide information that the Adverse Effect will be less than that predicted by application of Appendix 5 and DNRC may use the new information in its evaluation.

g. DNRC shall notify TWRD of the outcome of its review within thirty (30) days after the end of the time period for objection set forth in Section A.6.e. of this Article IV. If TWRD is not notified by DNRC within sixty (60) days of publication of notice by DNRC, TWRD may authorize the proposal pursuant to Tribal law.

h. DNRC and TWRD shall attempt to resolve objections or disagreement on TWRD's determination of no Adverse Effect on a cooperative basis. Measures to resolve objections may include agreement to release water from storage.

i. If resolution of an objection or disagreement is not achieved, DNRC or an objector may seek relief from the Compact Board established in Section D. of this Article IV.

7. **Reporting Requirements.**

a. Upon request by DNRC, on no more than an annual basis, the TWRD shall provide the MRCC, State and the United States with a listing of: all Non-Exempt New Development and Exempt New Development of the Tribal Water Right and any temporary emergency use or diversion of water on the Reservation.

b. The Tribes or the United States on behalf of the Tribes shall inventory the use of water rights for water developed before the Effective Date of the Compact set forth in Sections A.1.d., B.1.d. C.1.c., D.1.a., E.1.c., and G.2.a. of Article III, and shall report the inventory to DNRC within one year of the decree of the Tribal Water Right. Developments of Groundwater by means of a well or developed spring if the maximum flow of each well or developed spring is 35 gallons per minute or less and does not exceed a use of 10 Acre-feet per year are not required to be included in the inventory. This size limitation includes a Combined Development from the Same Source from two or more wells or developed springs.

B. **State Administration.**

1. **State Authority.**

a. Except as provided in Section C., D., and E., of this Article IV and Section B.3. of Article VII, the State shall administer and enforce all water rights Arising Under State Law to the use of surface water and Groundwater.

b. The State shall administer and enforce water rights set forth in Section E. of Article III on Tribal trust and fee land for use in the portion of the Missouri Basin 40EJ and Peoples Creek Basin 40I off the Reservation unless Congress acts to modify the Reservation boundary to include the Tribal trust and fee land. In administering the Tribal water rights on trust and fee land off the Reservation in Basins 40EJ and 40I, the State shall treat the Tribal rights as water rights Arising Under State Law except that non-use of all or any of the Tribal water rights off the Reservation in Basins 40EJ and 40I shall not constitute a relinquishment, forfeiture, or abandonment of such rights.

2. **Cooperative Management of a Controlled Groundwater Area.**

a. DNRC may designate or modify a controlled Groundwater area adjacent to the Reservation under the following circumstances:

(1) Pursuant to the requirements of § 85-2-506, MCA; or

(2) In cooperation with designation or modification by TWRD of a similar area on contiguous land within the Reservation; or

(3) Under order of the Compact Board as set forth in Section G.4.a.(2) of Article III.

b. The following procedures apply to designation or modification of a controlled Groundwater area pursuant to Section B.2.a. of this Article IV:

(1) Designation or modification of a controlled Groundwater area pursuant to Section B.2.a.(1) of this Article IV, or in the portion of an area off the Reservation pursuant to Section B.2.a.(2) of this Article IV, shall be governed by procedures set forth in § 85-2-506, MCA.

(2) Designation or modification of a portion of a controlled Groundwater area off the Reservation pursuant to Section B.2.a.(3) of this Article IV shall be with substitution of the following procedures for those set forth in §§ 85-2-506(3) and (4), MCA:

(a) DNRC shall hold a meeting to inform the public of the designation or modification of a controlled Groundwater area as ordered by the Compact Board.

(b) The DNRC shall publish notice of the time and place of the meeting to inform the public of the designation or modification of a controlled Groundwater area. The notice shall include the description by legal subdivision of all lands included in the area, and shall be published at least once in each week for 3 successive weeks not less than 30 days before the date of the meeting in a newspaper of general circulation in the county or counties in which the controlled Groundwater area is located.

c. Management within the portion of a controlled Groundwater area adjacent to the Reservation shall be as follows:

(1) Management within a controlled Groundwater area established pursuant to Section B.2.a.(1) of this Article IV shall be pursuant to §§ 85-2-501 to 520, MCA.

(2) Management within the portion of a controlled Groundwater area off the Reservation established pursuant to Sections B.2.a.(2) and (3) of this Article IV shall be pursuant to §§ 85-2-501 to 520, MCA, and in cooperation with the TWRD.

3. **New Development and Change in a Water Right Arising Under State Law.**

a. Any Person making a new development or change in a water right or portion of a water right Arising Under State Law, including a change in water right for the Milk River Project, must comply with State law, provided that, DNRC may not approve a change in water right for expansion of irrigation through use of salvaged water pursuant to § 85-2-402(2)(e), MCA, within the Milk River Basin under the following circumstances:

(1) the efficiency measures are funded in whole or in part by the State, United States, Tribes, or water users as part of the implementation of this Compact; or

(2) the salvaged water may be used to alleviate water shortage in the Milk River Basin. DNRC may promulgate rules to implement this provision.

b. Change in a water right Arising Under State Law upstream from any point on the Reservation, new development of water due to new storage approved by the Milk River Coordinating Committee, new development of water for municipal purposes upstream from any point on the Reservation, and new development of Groundwater that is not Hydrologically Connected to surface water within the Milk River Basin may not Adversely Affect a use of the Tribal Water Right developed before the date of the change. Determination of Adverse Effect for the purposes of this Section shall be pursuant to the procedures set forth in Section B.4. of this Article IV. The TWRD and DNRC may jointly agree to exempt certain changes in water rights from a showing of no Adverse Effect to the Tribal Water Right due to location, size, or other agreed upon parameter.

4. **Administrative Procedure for Preventing Adverse Effect Resulting from New Development or Change in a Water Right Arising Under State Law.** Except for changes exempt by agreement pursuant to Section B.3.b. of this Article IV and new development of stock impoundments or small wells exempt from the basin closure pursuant to Sections I.1.c. and d. of Article III, the following procedure for determining whether a new development or change in a water right Arising Under State Law within the Milk River Basin (including all tributary basins) upstream from the Reservation and below the Eastern Crossing, must be followed in addition to procedures set forth under state law, prior to a Person seeking relief from the Compact Board:

a. Application for a permit for new development or for a change in a water right Arising Under State Law shall be made to DNRC pursuant to State law.

b. DNRC shall review any application for a permit for new development or for a change in a water right and make a determination of whether it will Adversely Affect any use of the Tribal Water Right developed before the date of the application. In its review, DNRC shall apply the same principles used in a determination of adverse effect or adverse affect pursuant to the Water Use Act, Title 85, Chapter 2, MCA.

(1) Upon request, TWRD shall provide to DNRC information on uses of the Tribal Water Right.

(2) If DNRC determines that the new development or change will Adversely Affect a use of the Tribal Water Right developed before the date of the change, DNRC shall deny the application.

(3) If DNRC determines that the new development or change will not Adversely Affect a use of the Tribal Water Right developed before the date of the change, DNRC shall forward the application with its determination to TWRD by certified mail with return receipt requested.

c. Upon receipt of notice from DNRC, TWRD shall follow any requirements set forth in the Tribal Water Code for notification and objection of Persons authorized to use the Tribal Water Right. TWRD shall notify DNRC of the date of any notice to Persons authorized to use the Tribal Water Right.

d. TWRD may allow up to thirty (30) days after notification to Persons authorized to use the Tribal Water Right for objection by Persons authorized to use the Tribal Water Right. Any objection shall be made to TWRD.

e. TWRD shall review the application and the determination by DNRC of no Adverse Effect and any objections raised pursuant to Section B.4.d. of this Article IV.

f. TWRD shall notify DNRC of the outcome of its review within thirty (30) days of the end of the time period for objections set forth in Section B.4.d. of this Article IV. If DNRC is not notified by TWRD within sixty (60) days of notice by TWRD to Persons authorized to use the Tribal Water Right, DNRC may proceed with the application process.

g. DNRC and TWRD shall attempt to resolve objections or disagreement on DNRC's determination of no Adverse Effect on a cooperative basis.

h. If resolution of an objection or disagreement is not achieved, TWRD or an objector may seek relief from the Compact Board established in Section D. of this Article IV.

5. **Reporting Requirements.** Upon request by TWRD on no more than an annual basis, the DNRC shall provide the MRCC, Tribes, and the United States with a listing of all new development of water rights Arising Under State Law and any temporary emergency use or diversion of water, for the off-Reservation portion of the Milk River Basin upstream from any point of diversion or place of use of the Tribal Water Right.

6. **Peoples Creek Administration**

a. The DNRC shall develop a database covering water use upstream from the Reservation in Peoples Creek Basin 40I. The database shall include, at a minimum: identification of acreage irrigated on an annual basis; and any change in the use of a water right or storage facility.

b. If the Tribes or a Person authorized to use a portion of the Tribal Water Right within the Peoples Creek Basin 40I disputes a use or uses of water upstream from the Reservation in Basin 40I because the use or uses are in excess of a water right Arising Under State Law, or if the Tribes or Person authorized to use a portion of the Tribal Water Right believes that depletions in excess of water rights Arising Under State Law are occurring upstream from the Reservation but cannot identify the illegal use, the Tribes or Person shall contact the TWRD. The TWRD shall contact the DNRC concerning the dispute or excess depletion. If requested, the DNRC shall, within a reasonable time, investigate the disputed water use, or uses, or excess depletion and a representative of the TWRD may accompany DNRC on the investigation. If DNRC finds that the disputed water use or uses or excess depletion is in excess of a water right Arising Under State Law, DNRC may order any owner or operator of the diversion or storage facilities to curtail the use to within the water right. If any owner or operator does not comply with the order by DNRC or repeats the infraction, DNRC may: impose penalties pursuant to § 85-2-122, MCA; and may require any owner or operator of the appropriation facility to install and maintain suitable controlling and measuring devices to allow the DNRC to track compliance with the water right. Disputes unresolved by the process set forth in this Section may be brought before the Compact Board established pursuant to Section D. of this Article IV.

C. **Milk River Coordinating Committee.** A basin-wide coordinating committee is necessary to improve the coordination of storage operations and to provide for the coordination of releases of water from storage within or for the diversion to the Milk River Basin. A coordinating committee is also necessary to improve the management of diversions from the Milk River and to establish priorities for a grant and loan program to improve water supply conditions in the basin.

1. **Establishment of Milk River Coordinating Committee.** There is hereby established the Milk River Coordinating Committee ("MRCC.").

2. **Membership.**

a. The MRCC consists of the following nine (9) voting members and four advisory members. Six (6) voting members of the MRCC constitutes a quorum and decisions shall be by a majority of the membership of the MRCC present, except as provided in Sections C.3.a. and C.5.c. of this Article IV. On the addition of members pursuant to Section C.3.a. of this Article IV, the quorum shall increase by one (1) for every two (2) members added to the original nine (9).

(1) Two (2) representatives of the Tribes;

(2) Three (3) representatives of the Joint Board of Control of the Milk River irrigation districts;

(3) One (1) representative of DNRC;

(4) One (1) representative of the Bureau of Reclamation;

(5) One (1) representative of the Bureau of Indian Affairs;

(6) One (1) representative selected at large by the other 8 members;

(7) One (1) advisory, non-voting, member from the United States Geological Survey;

(8) One (1) advisory, non-voting, member from the United States Fish and Wildlife Service;

(9) One (1) advisory, non-voting, member from the United States Bureau of Land Management; and

(10) One (1) advisory, non-voting, member from the Montana Department of Fish, Wildlife, and Parks.

b. All members shall be appointed by their respective agencies within six (6) months of the Effective Date of this Compact and within thirty (30) days of the date any vacancy occurs. Should the eight appointed members fail to agree, by a majority of a quorum as provided in Section C.2. of this Article IV, on the selection of a ninth member within sixty (60) days of the date of appointment of the eighth member, or within thirty (30) days after a vacancy in the ninth position occurs, the following procedure shall be utilized:

(1) Within five (5) days thereafter, each member shall nominate one person to serve as a member of the MRCC;

(2) Within five (5) days thereafter, the eight nominees shall be submitted to the chief judge of the United States District Court for the District of Montana for selection of the ninth member of the MRCC. If the chief judge declines for any reason to select the ninth member, the chief justice of the Montana Supreme Court shall make the selection from the eight nominees.

c. Each member shall serve a five-year term and shall be eligible for reappointment. The initial terms of each voting member shall be staggered with three members serving a five-year term, three members a four-year term, and three members a three-year term. The initial term of each voting member shall be chosen by lot. The initial term of the advisory members shall be five years. A member seeking to resign prior to expiration of a term must provide written notice to the remaining MRCC members thirty (30) days prior to withdrawal.

d. The MRCC shall select a chair from the voting members within six (6) months of the initial selection of the ninth member and shall rotate the chairmanship on a yearly basis among the voting members.

e. The MRCC shall provide published notice of the time, place, and purpose of its meetings, or other proceedings, and shall hold such proceedings in a forum open to the public unless compelled to close certain portions of a proceeding to protect an individual right to privacy.

f. The MRCC shall adopt necessary rules, pursuant to the Montana Administrative Procedure Act §§ 2-4-101 et. seq. (MCA), to carry out its responsibilities within six (6) months of the initial selection of the ninth member. The MRCC may amend and repeal rules as necessary to carry out the purposes of this Article IV.

g. Costs and compensation for State, federal, and Tribal members of the MRCC shall be covered by their respective entities.

h. Subject to the availability of funds, the MRCC may compensate any MRCC member not compensated by the entity they represent for time and travel devoted to MRCC business. Compensation shall be based on the average hourly compensation of the other MRCC members.

3. **Authority and Duties of the MRCC.** Notwithstanding any other provision of State, Tribal, and, if this Compact is approved by Congress, federal law, the MRCC shall have the following authority and duties:

a. The initial authority of the MRCC is restricted to the mainstem of the Milk River downstream from the Eastern Crossing. The MRCC has the authority to expand the boundaries of its area by a unanimous vote of the MRCC, including the area within which it may levy a tax, to include tributaries to the Milk River or the portion of the Milk River Basin upstream from the Western Crossing. Such expansion shall require the agreement of Persons holding a majority of the water rights by amount on the source added pursuant to the following procedure:

(1) Any Person or Persons owning 10% or more of the water rights by rate or volume on any tributary to the Milk River within the United States or on the mainstem of the Milk River upstream from the Western Crossing may petition the MRCC for addition to the area covered by the MRCC and for representation on the MRCC.

(2) On receipt of a petition, the MRCC shall notify DNRC and provide a copy of the petition.

(3) Within 60 days of receipt of the petition, DNRC shall hold a hearing in or near the area proposed for addition. DNRC shall publish notice of the hearing once in a newspaper of general circulation in the proposed area and serve notice by first-class mail on any holder of a water right Arising Under State Law and any holder of an adjudicated federal or Indian water right who, according to the records of the DNRC, has a water right within the area proposed for addition with a priority date before the date of the petition.

(4) The MRCC shall preside over the hearing. If the MRCC determines, based on the facts presented at the hearing and other relevant facts and information as may be available, and in the interest of improving water supply or allocation, that there is a need for addition of the area, the MRCC will notify the DNRC.

(5) On receipt of notice for the addition of an area to the MRCC, the DNRC shall send a ballot by first-class mail, with a 30-day deadline for its return, providing for a vote on the proposed addition, to any holder of a water right Arising Under State Law and any holder of an adjudicated federal or Indian water right who, according to the records of the DNRC, has a water right with a priority date before the date of the petition.

(6) Following expiration of the 30 day deadline for receipt of ballots, the DNRC shall count the votes and notify the MRCC of the results.

(7) The area proposed for inclusion in the MRCC shall be added to the MRCC with a representative if a majority of those voting are in favor of the addition.

b. Members of the MRCC may seek technical support from their respective agencies to facilitate the activities of the MRCC. To this end, the Parties agree to seek any necessary authorization to provide technical support to the MRCC. In addition, the MRCC shall have the following authority:

(1) The MRCC may employ a secretary and such other officers, agents, and employees, permanent and temporary, as it may require and shall determine their qualifications, duties, and compensation.

(2) The MRCC shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

(3) The MRCC may call upon the county attorney of any county in which the MRCC has authority or the attorney general of the state for any legal services it may require, or it may employ their own counsel and legal staff.

c. The MRCC shall hold a meeting on an annual basis with, at a minimum, the Bureau of Reclamation, the Bureau of Indian Affairs, the Tribes, the Milk River Joint Board of Control, DNRC, and Hill County to coordinate reservoir storage.

d. The MRCC shall coordinate the establishment and yearly update of a common database and associated maps on actual water use of water diverted from the mainstem of the Milk River downstream from the Eastern Crossing between: DNRC; the Bureau of Reclamation; the Bureau of Indian Affairs; the irrigation districts within the Milk River Project; and the Tribes. At a minimum, each entity will maintain a database and share information on daily diversions, yearly number of acres irrigated, and yearly changes in use. The MRCC role is one of coordination. The BOR, BIA, TWRD and irrigation districts will continue to maintain the portion of the database covering their own water distribution. The DNRC will continue to maintain its database covering water rights and diversions from the water sources.

(1) The MRCC shall make the database and associated maps available to any water commissioner appointed by a court to enforce water rights in the Milk River Basin.

(2) The DNRC and TWRD shall offer assistance as may be appropriate to the MRCC to update, maintain, and provide training for use of the database.

e. The MRCC shall consult with the Bureau of Reclamation in the Bureau's development of operating criteria pursuant to Section C.11. of this Article IV, for coordination of storage and release of water from storage facilities within the portion of the Milk River Basin in the United States and contributing to the water supply of the Milk River Basin, provided that, except as explicitly provided for in this Compact or by Congress, allocations in the federal and future Tribal reservoirs within the Milk River Basin or contributing to the water supply of the Milk

River Basin shall remain unchanged and the right of the owner of a storage facility to exercise discretion in the daily operation and use of its facilities shall not be preempted.

f. Notwithstanding the rights to the use of water existing on the date of a determination by the BOR of excess water flow pursuant to Section C.11.f. of this Article IV, the MRCC may permit the owner of storage in the Milk River Basin to store water regardless of priority if capacity exists and the water would otherwise be lost to the Milk River Basin. Water stored pursuant to this provision may be used to satisfy water rights served by the entity storing the excess flow.

g. The MRCC shall review applications for new storage in the Milk River Basin below the Eastern Crossing.

(1) Any Person or Persons, including the Tribes, seeking to develop or enlarge storage in the United States' portion of the Milk River Basin below the Eastern Crossing, other than new or enlarged storage agreed to in the Compact or pursuant to the federal Act ratifying this Compact, must comply with each of the following criteria:

(a) Application describing the project shall be made to the MRCC; and

(b) The applicant must prove by a preponderance of the evidence that the project will result in a net increase in available water supply within the Milk River Basin below the Eastern Crossing.

(2) The MRCC shall issue a report on its findings and determination.

(3) If the MRCC determines that the application for new storage does not meet the criteria in Section C.3.g.(1)(b) of this Article IV, the determination is final, subject to the right of appeal under the following subsection (4).

(4) Appeal of decisions by the MRCC concerning new storage may be sought in a court of competent jurisdiction. Any appeal heard by a court of competent jurisdiction shall be a trial de novo.

(5) Any applicant that the MRCC determines meets the criteria in Section C.3.g.(1)(b) of this Article IV must further comply with all other applicable State, federal, and Tribal law. The determination of the MRCC or any final appeal is binding on the Tribes, the State, and the United States in consideration of any application for development of new storage.

h. The MRCC does not have the authority to coordinate storage or storage releases in a manner that is inconsistent with any applicable provisions of State, Tribal, and federal law, and the decrees of the Water Court. The responsibility for storage and storage releases in the Milk River Project facilities rests solely with the Bureau of Reclamation, its successors or assigns; provided that, if approved by Congress, the BOR shall participate in efforts at coordination as a member of the MRCC.

i. The MRCC shall have the authority to review applications for grants and loans from the Milk River Watershed Improvement Trusts and to determine prioritization for receipt of grants and loans pursuant to this Compact and § 85-20-1006, MCA, and C. 6., 7., 8., 9., and 10. of this Article IV. The DNRC shall offer assistance as may be appropriate to the MRCC for review of applications for grants and loans. The Milk River Watershed Improvement Trusts are permanent accounts established by this Compact and § 85-20-1005, MCA, to provide interest for grants for purchase of water for a Water Bank in times of significant short term water shortage, and for loans for long term improvements within the Milk River Basin.

4. **Legal Status of MRCC - Immunity.**

a. The MRCC may make and execute agreements necessary to perform its responsibilities as provided in this Compact.

b. The MRCC may apply for State and federal grants and loans available to governmental entities or watershed organizations.

c. The MRCC may sue and be sued to enforce agreements entered into pursuant to this Section C.4. of Article IV in the name of the MRCC. The MRCC, an MRCC member, or MRCC employee is immune from suit for any liability that might otherwise be incurred or imposed for an act or omission committed while engaging in MRCC activities pursuant to this Article IV, unless the act or omission constitutes criminal behavior, gross negligence, was committed in bad faith, or was committed with malicious purposes. Nothing in this provision is intended to waive immunity that is applicable to the United States or any federal employee, to the State or any State employee, or to the Tribes or any Tribal employee.

5. **MRCC Finance.**

a. The MRCC may request up to 15% per year of the interest on the Milk River Watershed Improvement Trusts to cover administrative costs, including but not limited to: the cost of review of applications for grants and loans; and the cost of compensation for MRCC members pursuant to Section C.2.h. of this Article IV.

b. The MRCC may apply for grants and loans from applicable State, Federal, and Tribal programs.

c. Subject to § 15-10-420, MCA, the MRCC may, on unanimous vote of all voting members, levy taxes on water use pursuant to a water right Arising Under State Law from the mainstem of the Milk River, including, water use under contract with the Bureau of Reclamation, to pay any obligation of the MRCC and to fulfill its duties established by this Compact.

(1) The assessment shall be limited to land irrigated by water from the Milk River, and other non-irrigation water use from the Milk River Project.

(2) The assessment in any one year may not exceed: 0.5% of the assessed value of irrigated land; 0.5% of the taxable portion of the assessed value of a household, and 0.5% of the taxable portion of the assessed value of industrial or commercial land where water is used, with such assessments as determined by the Montana Department of Revenue, without the consent of the majority of the water users subject to the assessment.

(3) Subject to § 15-10-420, MCA, the board of county commissioners of each county in which the MRCC imposes an assessment may, annually at the time of levying county taxes, levy an assessment on the applicable water use. The levy must be known as the "Milk River Coordinating Committee regular assessment." The assessment must be certified to the Department of Revenue and entered on the property tax record of each county.

(4) Any special assessment levied pursuant to this Section shall constitute a lien against the property upon which such assessment is levied from the date of such levy. This lien can only be extinguished by payment of such assessment with all penalties, costs, and interest.

d. The Parties agree to seek funding to cover a Tribal contribution to the MRCC. Any Tribal participation in contribution shall be equivalent to assessments associated with lands and uses off the Reservation.

e. On an annual basis, the MRCC shall make a report of its expenditures available to the public.

6. **Milk River Watershed Improvement Trusts.**

a. The Milk River Watershed Improvement Trusts established pursuant to this Compact and § 85-20-1005, MCA, are permanent trusts for the generation of interest on the Trusts' principal for the allocation of grants and loans to improve conditions of water supply, water quality, and habitat in the Milk River basin.

b. The MRCC shall review and rank in order of priority, pursuant to the criteria in Sections C. 6., 7., 8., 9., and 10. of this Article IV, applications for grants and loans from the Milk River Watershed Improvement Trusts. The MRCC may seek technical assistance from the Department of Natural Resources and Conservation, the TWRD, and the United States Bureau of Reclamation for review of applications for grants and loans.

c. Allocation of funds from the Milk River Watershed Improvement Trusts shall be managed by the Department of Natural Resources and Conservation. Disbursement of grants and loans from interest on the Milk River Watershed Improvement Trusts by DNRC must be pursuant to prioritization provided by the MRCC.

d. The DNRC shall adopt rules:

(1) prescribing the form and content of applications for grants and loans from the Milk River Watershed Improvement Trusts;

(2) providing for the servicing of loans, including arrangements for obtaining security interests and the establishment of reasonable fees or charges;

(3) providing for the confidentiality of financial statements submitted;

(4) prescribing the conditions for making grants and loans;

(5) establishing the interest rate for the loans; and

(6) determining the type and amount of security interest in real estate that will be accepted and any conditions to be made upon the security interest.

e. At the request of the MRCC, the DNRC may allocate up to 15% of the annual interest from the Milk River Watershed Improvement Trusts to cover capital and administrative costs of the MRCC.

7. **Milk River Watershed Improvement Trusts - Applications for Grants and Loans for Watershed Improvements.**

a. An application for a grant or loan from the Milk River Watershed Improvement Trusts established by this Compact and § 85-20-1005, MCA, must be in the form prescribed by the DNRC and contain or be accompanied by any information necessary to adequately describe the proposed project and provide for evaluation under Sections C.8., and 9., and 10. of this Article IV.

b. Application for a grant or loan from the Milk River Watershed Improvement Trusts may be made by Persons, including but not limited to:

(1) individuals holding water rights Arising Under State Law;
(2) tribes;
(3) persons authorized to use water by a tribe;
(4) municipalities;
(5) irrigation districts; and
(6) conservation districts.

8. **Milk River Watershed Improvement Trusts - Establishment of Water Bank.** The purpose of this Section is to establish a water bank for implementation in years of significant short term water shortage. The bank is not intended to alleviate normal water shortage within the Milk River Basin.

a. By March 1 of each year and on a monthly basis through October 31, the BOR shall notify the MRCC, DNRC, the Tribes, the U.S. and the Milk River irrigation districts, if it expects, based on current information, water deliveries to be restricted during the current irrigation season due to a critical water shortage. Water shortage may be caused by factors which include, but are not limited to:

(1) low precipitation;
(2) requirements for fish and wildlife species of special concern; or
(3) temporary delivery system outage caused by an unexpected failure or a natural disaster.

b. Following notice by the BOR of expected restrictions in water delivery, the MRCC shall publish notice in newspapers of general circulation within the Milk River Basin of the availability of grants to purchase water for the purpose of alleviating shortage.

c. The MRCC may offer the grants at a fixed price per Acre-foot or may seek bids. For any applicant banking water received from the Milk River Project, the grant must be sufficient to cover payments to the Project, including any assessments or fees paid to an irrigation district.

d. The MRCC may allocate banked water to storage, or may market or allocate banked water to alleviate shortage. Any fees obtained by the MRCC through marketing of banked water must be returned to the Trust as part of the expendable interest. Banked water may be marketed or allocated: on a pro rata basis; to alleviate critical shortages; to meet critical environmental or water quality needs; for irrigation needs; or may be allocated to storage.

e. Grants obtained for the temporary retirement of Milk River Project water must first be used by the applicant to cover payments to the Milk River Project, including any assessments or fees paid to an irrigation district.

f. Nothing within this Section C.8. of Article IV is intended to preclude a more comprehensive water marketing system within the Milk River Basin.

9. **Milk River Watershed Improvement Trusts - Eligibility for Grants for Water Banking or Water Transfers.**

a. The Milk River Coordinating Committee shall apply the following criteria in ranking applications for grants:

(1) the need for temporary retirement of irrigation or conversion to low water-use crops for the purpose of banking water to alleviate a critical shortage of water in a particular year;

(2) the extent to which the proposed water banking will alleviate significant short term water shortage in the Milk River Basin as set forth in Section C.8. of this Article IV;

(3) the proposed retirement of irrigation involves lands irrigated the year prior to the declaration of a critical water shortage in the Milk River Basin and involves a valid water right;

(4) the feasibility and practicality of the proposed irrigation retirement or conversion;

(5) the number of related resources that will benefit, including but not limited to: water quality, fisheries habitat, wildlife habitat, and recreation;

(6) preference for an applicant in an area identified by the MRCC as beneficial for temporary irrigation retirement, or if no specific area has been identified for preference, the MRCC shall attempt to rank applicants in a manner that distributes temporary irrigation retirement equally among the counties in the Milk River Basin; and

(7) any additional factor that, in the judgment of the MRCC, is important to the evaluation of land retirement in light of the purposes of the Milk River Watershed Improvement Trusts.

b. The MRCC shall not recommend grants for acreage in excess of that necessary to save sufficient water to alleviate the temporary water shortage. The MRCC shall not recommend grants in excess of the interest available from the Milk River Watershed Improvement Trusts.

c. The DNRC may award a grant to an applicant ranked by the MRCC for the purpose of water banking only if the DNRC finds, based on the application, the investigation and evaluation of the proposal by members of the MRCC, and the technical review by DNRC, TWRD, and BOR, that the primary purpose of the application is:

(1) the temporary retirement of the right to irrigate land irrigated in the year prior to the declaration of a critical water shortage in the Milk River Basin; or

(2) the irrigation proposed for temporary retirement or crop conversion is subject to a valid water right pursuant to State, federal, or Tribal law, and the applicant has the legal right to transfer the water.

(3) the criteria set forth in Sections C.9.a. and b. of this Article IV have been met.

10. **Milk River Watershed Improvement Trusts - Eligibility for a Loan.**

a. The Milk River Coordinating Committee shall apply the following criteria in ranking applications for loans:

(1) the extent to which the project will alleviate water shortage in the Milk River Basin;

(2) the engineering feasibility and practicality of the project;

(3) the number of related benefits, including but not limited to improvements in: water quality; fish habitat; wildlife habitat; conservation; recreation; water use efficiency; water management; and water right measurement;

(4) any additional factor that, in the judgment of the MRCC, is relevant to the purposes of the Milk River Watershed Improvement Trusts, including reducing the ranking due to the fact that the application is for a project in a portion of the Milk River Basin that is not a part of the Milk River Coordinating Committee regular assessment.

b. The DNRC may award a loan to an applicant ranked by the MRCC, if the DNRC finds, based on the application, the investigation and evaluation of the proposal by members of the MRCC, and the technical review by DNRC, TWRD, and BOR, that:

(1) the criteria in Section C.10.a. of this Article IV have been met;

(2) the proposal will be economically feasible;

(3) the proposal will comply with statutory and regulatory standards protecting the quality of resources such as air, water, land, fish, wildlife, and recreational opportunities;

(4) the applicant has adequate financial resources to construct, operate, develop, and maintain the project; and

(5) the applicant is credit-worthy and is able and willing to enter into a contract with the DNRC for loan repayment and for construction, operation, development, and maintenance of the proposed project.

11. **Coordination of Storage and Release Within the Portion of the Milk River Basin in the United States and New Storage.** Subject to the applicable provisions of State, Tribal, and federal law, the MRCC shall, within five (5) years of the Effective Date of the Compact, consult with the Bureau of Reclamation on development of operating criteria for coordination of storage and release of water from storage facilities within the portion of the Milk River Basin in the United States. Except as explicitly provided for in this Compact or by Congress, allocations in the federal and future Tribal reservoirs within the Milk River Basin or contributing to the water supply of the Milk River Basin, shall be unchanged. The

operating criteria may be modified as necessary and such modification shall not be considered a modification of the Compact.

a. At a minimum, the operating criteria shall include coordination of storage among: Sherburne, Fresno, and Nelson Reservoirs and Hill County Reservoir near Havre, any new storage on the Reservation filled by diversion from the Milk River or Peoples Creek, and any new storage developed pursuant to Section C.3.g. of Article IV.

b. The Bureau of Reclamation shall take comment on development of the operating criteria from, at a minimum, any entity or individual owning, benefiting from, or operating storage within the Milk River Project, or operating storage within the Milk River Basin below the Eastern Crossing. The process for such comment may be pursuant to existing federal and State law.

c. In developing the operating criteria, the Bureau of Reclamation shall make all reasonable efforts to maximize the amount of water stored through coordination of storage and release within the Milk River Basin as a whole without regard to the priority date of water rights associated with a particular storage facility. The purpose of coordination shall be to provide the maximum use of storage possible for the Milk River Basin, including providing flexibility on a temporary basis.

d. The coordination of storage and release to maximize the amount of water stored shall not modify the storage right of any Person in any storage facility or alter the obligations of any Person to pay construction, operation, maintenance and replacement costs for a facility, or alter the right and discretion of the owner of a storage facility to use or release water to satisfy water rights under its jurisdiction.

e. The operating criteria shall include, at a minimum: a method for accounting for water stored in various storage facilities in the Milk River Basin; a method for coordination of fill and release from storage facilities in the Milk River Basin on a yearly basis; and a method for notification of Persons with the right to divert water from the mainstem of the Milk River below the Eastern Crossing of the predictions for water availability on a yearly basis.

f. As part of the process to develop operating criteria, the BOR will establish criteria for determining the existence of a critical shortage or excess water flows.

g. The Bureau of Reclamation in consultation with the MRCC shall modify the operating criteria as necessary to address changes in the Milk River Basin including the addition, modification, or reduction of storage. The operating criteria is required by, but is not in substance, a part of or enforceable under the Compact. Its modification is not a modification of the Compact.

D. **Compact Enforcement: Fort Belknap - Montana Compact Board**

1. **Establishment of Board.** There is hereby established the Fort Belknap - Montana Compact Board.

2. **Membership.**

a. The Board consists of three members: a member selected by the Governor of the State of Montana from up to four nominees, one nominated by the Commissioners of each of the following counties: Hill, Blaine, Phillips, and Valley; a Tribal member selected by the Fort Belknap Community Council Tribal Chair; and one member selected by the other two members.

b. All members shall be appointed within six (6) months of the Effective Date of this Compact and within thirty (30) days of the date any vacancy occurs. If an appointment is not timely made by the Governor, the Director of DNRC or his/her designee shall fill the State's position. If an appointment is not timely made by the Tribes, the Director of the TWRD or his/her designee shall fill the Tribes' position.

c. Should the two appointed members fail to agree on the selection of a third member within sixty (60) days of the date of appointment of the second member, or within thirty (30) days after a vacancy in the third position occurs, the following procedure shall be utilized:

(1) Within five (5) days thereafter, each member shall nominate two persons to serve as a member of the Board;

(2) Within fifteen (15) days thereafter, each member shall reject one of the persons nominated by the other member;

(3) Within five (5) days thereafter, the remaining two nominees shall be submitted to the chief judge of the United States District Court for the District of Montana for selection of the

third member of the Board. If the chief judge declines for any reason to select the third member, the chief justice of the Montana Supreme Court shall make the selection from the remaining two nominees.

d. Each member shall serve a five-year term and shall be eligible for reappointment. The initial term of each member shall be staggered with one member serving a five-year term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen by lot. A member seeking to resign prior to expiration of a term must provide written notice to the remaining Board members thirty (30) days prior to withdrawal.

e. The Board shall provide reasonable notice of the time, place, and purpose of any meeting, hearing, or other proceeding to each of its members. Two members of the Board shall constitute a quorum.

f. The Board shall adopt necessary rules and regulations to carry out its responsibilities within six (6) months after its first meeting.

3. **Jurisdiction of the Board.** The Fort Belknap-Montana Compact Board shall have the jurisdiction to resolve controversies over the right to the use of water between Persons authorized to use any portion of the Tribal Water Right and Persons holding any water rights Arising Under State Law. Controversies under the jurisdiction of the Compact Board may include disputes concerning the meaning of this Compact. The jurisdiction of the Compact Board does not extend to controversies within the scope of the order appointing a water commissioner or commissioners to distribute water from the mainstem of the Milk River pursuant to Section B.3. of Article VII. Such controversies shall be resolved by the court appointing the water commissioner or commissioners.

4. **Administrative Remedy Prior to Board Action.**

a. **Change in Use, Transfer, or Non-Exempt New Development of the Tribal Water Right:** Any Person with a water right Arising Under State Law objecting to a Change in Use, Transfer, or Non-Exempt New Development of the Tribal Water Right, shall comply with the administrative procedures set forth in Section A.6. of this Article IV for review of applications for Change in Use, Transfer, or Non-Exempt New Development prior to seeking relief from the Compact Board.

b. **Change in water rights Arising Under State Law:** The Tribes or any Person authorized to use a portion of the Tribal Water Right objecting to a change in water right, or new development of a water right Arising Under State Law, shall comply with the administrative procedures set forth in Section B.3. of this Article IV for review of applications for change in appropriative right, prior to seeking relief from the Compact Board.

5. **Funding of the Board.** Expenses of the members of the Board appointed by the State and the Tribe shall be the responsibility of the entity appointing the member, subject to the availability of funds. The expenses of the third member and all other expenses, including the cost of notice, shall be shared equally by the Tribe and the State, subject to the availability of funds.

6. **Hearings Before the Board.**

a. In proceedings before it, the Board shall issue notice and hold hearings. The Board may seek the assistance of DNRC and TWRD in issuing notice.

b. In proceedings before it, the Board shall have the power to administer oaths, take evidence, and issue subpoenas to compel attendance of witnesses or production of documents or other evidence. The Board may apply to a state or federal district court, or Tribal court to compel compliance with subpoenas or the giving of testimony. The Tribes and the State shall enforce the subpoenas in the same manner as prescribed by the laws of the Tribes and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action.

c. The Board may appoint technical experts.

d. The parties to the controversy may present evidence and cross examine any witnesses.

e. The Board shall determine the controversy and order any appropriate relief, including the installation of measuring devices and temporary relief, provided that, the Board shall have no power to award money damages or attorneys fees. The Board may assess costs, provided that, the Board may not assess costs against the Tribes or the State, or against the United States.

f. All Board decisions shall be by a majority of the Board, shall be in writing, and, together with any dissenting opinions, shall be served on all parties in the proceeding before the Board and on the Parties to this Compact.

g. All records of the Board shall be open to public inspection, except as otherwise ordered by the Board to protect matters of individual privacy.

h. **Waiver of Immunity.** The Tribes and the State waive their respective immunities from suit, including for the appeal or judicial enforcement of Board decisions, to permit the resolution of disputes by the Fort Belknap - Montana Compact Board. Such waiver of immunity by the Tribes or the State shall not extend to any action for money damages, costs, or attorneys' fees.

i. **Review and Enforcement of Board Decisions.**

(1) Decisions by the Board are effective immediately, unless stayed by the Board. Unless otherwise provided by Congress, only parties to the proceedings before the Board or the United States may appeal any final decision by the Board to a court of competent jurisdiction within thirty (30) days of service of such decision. The hearing on appeal by any party except the United States (unless otherwise provided by Congress) shall be on the record. The United States may seek a trial de novo on appeal. The notice of appeal shall be filed with the Board and served personally or by registered mail on all parties to the proceeding before the Board.

(2) Unless appeal is filed within thirty (30) days of a final decision of the Board, the decision shall be recognized and enforced by any court of competent jurisdiction on petition of: the Board; any party before the Board in the proceeding in which the decision was made; the State; the Tribes, or the United States.

(3) A court of competent jurisdiction in which a timely appeal is filed or in which a petition to confirm or enforce a decision by the Board is filed, may order such temporary or permanent relief as it determines to be appropriate.

(4) Any appeal may be taken from a decision of the court in which an appeal from a Board decision is filed or in which a petition to confirm or enforce a decision of the Board is filed, in the manner and to the same extent as from orders of judgments of the court in a civil action.

(5) In any appeal from a Board decision or petition to confirm or enforce a Board decision, the Board shall file with the court the record of the proceedings before the Board within sixty (60) days of the filing of the appeal or petition.

E. **Administration of the Milk River to Satisfy the Tribal Water Right.**

1. **Operation of the Milk River to Satisfy the Tribal Water Right.**

a. Delivery of water on the mainstem of the Milk River shall include measures necessary to assure satisfaction of the Tribal Water Right.

b. To satisfy the Tribal Water Right, including to replace water depleted on tributaries to the Milk River excluding Peoples Creek, and water depleted on the mainstem of the Milk River upstream from the Western Crossing through exercise of water rights Arising Under State Law, the Milk River Project storage facilities shall be operated to release or bypass the water necessary to assure satisfaction of the water right set forth in Section A.1.a. of Article III, subject to the following conditions:

(1) The Tribes shall notify the Bureau of Reclamation or its successor as operator of the Milk River Project and any water commissioner appointed following petition by the Parties pursuant to Section B.3. of Article VII, or any other person or entity, when the Tribes seek release or bypass of water to satisfy the water right set forth in Section A.1.a. of Article III. The obligation of the Bureau of Reclamation ends with the release or bypass. Enforcement necessary to deliver the water to the Reservation shall be pursuant to this Compact.

(2) The amount of water released or bypassed to satisfy the water right set forth in Section A.1.a. of Article III shall not exceed the lesser of:

i. 645 Cfs; or

ii. the Calculated Undepleted Flow of the Milk River calculated pursuant to Section E.2. of this Article IV, modified to reflect any agreement or adjudication between the Blackfeet Tribe and the Fort Belknap Indian Community of the Fort Belknap Reservation on allocation of water from the Milk River to the Blackfeet Tribe, to the extent such agreement or adjudication affects the Calculated Undepleted Flow of the Milk River; or

iii. the amount and flow rate of water the Tribes can actually divert for use, storage, or diversion under an agreement for Transfer at the time of their notice to the Bureau of Reclamation and any water commissioner.

(3) In assuring satisfaction of the Tribal Water Right, the operators of the Milk River Project storage facilities shall use their best efforts to operate those facilities consistent with the criteria developed pursuant to Section C.11. of this Article IV. Provided, however, that any effort to maximize the amount of storage within the Milk River Basin or to comply with the operating criteria developed pursuant to Section C.11. of this Article IV shall not diminish or alter the obligations contained in Sections E.1.a. and b. of this Article IV to assure satisfaction of the Tribal Water Right.

2. **Calculated Undepleted Flow of the Milk River.**

a. The determination of the Calculated Undepleted Flow of the Milk River at the point where the Milk River intersects the diversion point on the Reservation shall be done by the United States Bureau of Reclamation, in consultation with DNRC and TWRD, with review by the U.S.G.S. pursuant to the formula set forth in Appendix 4.

b. The amount of the United States' Share of the Natural Flow of the Milk River available for the Tribes shall be modified as necessary to reflect any agreement between the Blackfeet Tribe and the Fort Belknap Indian Community of the Fort Belknap Reservation on allocation of water from the Milk River, or adjudication of the Blackfeet Tribe's reserved water rights.

c. The Calculated Undepleted Flow of the Milk River may be modified pursuant to Appendix 4. and such modification shall not be considered a modification of the Compact.

ARTICLE V - DISCLAIMERS AND RESERVATION OF RIGHTS

A. **No Effect on Other Tribal Rights or Federal Reserved Water Rights.**

1. Except as provided in Sections A.2.a. of Article III, the relationship between the Tribal Water Rights of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community, Tribal members, and Allottees on the Fort Belknap Reservation described in this Compact and any rights to water of any other Indian tribe, tribal member, or Indian owner of trust lands claiming water under federal or tribal law, or of the United States on behalf of such tribe, tribal member, or Indian owner of trust lands, shall be determined by the rule of priority unless otherwise agreed to by such tribe, tribal member, or Indian owner of trust lands, or the United States on behalf of such tribe, tribal member, or Indian owner of trust lands.

2. Nothing in this Compact may be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other Indian tribes, tribal members, or Indian owner of trust land of other Indian tribes outside of the Fort Belknap Reservation.

3. Except as provided in Sections C., D., and E. of Article IV and Section B.3. of Article VII pertaining to administration in the Milk River Basin, nothing in this Compact is otherwise intended to affect a right or claim of an Indian Tribe other than the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation.

4. Except as provided in Sections C., D. and E, of Article IV and Section B.3. of Article VII pertaining to administration in the Milk River Basin, nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of the United States on federal lands outside the Fort Belknap Reservation.

B. **General Disclaimers.** Nothing in this Compact may be construed or interpreted:

1. As a precedent for the litigation of reserved water rights;

2. As a precedent for the interpretation or administration of future compacts between the United States and the State, or the United States and any other state;

3. Except as provided in Section I. of Article III closing certain basins to new appropriations under State law, to preclude the acquisition or exercise of a right Arising Under State Law to the use of water by any Allottee or member of the Tribes outside the Reservation by purchase of such right or by application to the State in accordance with state law;

4. To determine the relative rights inter sese of Persons using water under the authority of the State or the Tribes;

5. To limit in any way the rights of the Parties or any other Person to litigate any issues or questions not resolved by this Compact;

6. To authorize the taking of a water right which is vested under State or federal law;

7. To create or deny substantive rights through headings or captions used in this Compact;

8. To prejudge how, in any interstate apportionment, the Tribal Water Right shall be counted;

9. To constitute a waiver of sovereign immunity by the Tribes or State except as is expressly set forth in this Compact;

10. To constitute a waiver of sovereign immunity by the United States except as expressly set forth in 43 U.S.C. § 666 (1952);

11. To prohibit the Tribes, Tribal members, or Allottees, or the United States on behalf of the Tribes, Tribal members, or Allottees except as agreed to in Appendix 3, or the United States in any other capacity from objecting in any general stream adjudication in Montana Water Court to any claims to water rights;

12. Except as provided by Congress, to prevent the Tribes, or the United States on behalf of the Tribes, from filing an action in a court of competent jurisdiction to prevent any Person or Party from interfering with the Tribes in the enjoyment of the Tribal Water Right;

13. To affect or determine the applicability of any state or federal law, including, without limitation, environmental and public safety laws, on activities of the Tribe, Tribal members, or Allottees, or the State or state water right holders, or the United States or the United States Bureau of Reclamation;

14. To modify any portion of Article VI of the "Treaty Between the United States and Great Britain Relating to Boundary Waters, and Questions Arising Between the United States and Canada," January 11 1909, and ratified by the Senate on May 13, 1910, 36 Stat. 2455, and the Order of the International Joint Commission on October 4, 1921 pertaining to "In the matter of the Measurement and Apportionment of the Waters of the St. Mary and Milk Rivers and their Tributaries in the State of Montana and the Provinces of Alberta and Saskatchewan;"

15. To prevent the Tribes from participating in any project to import water to, or improve storage in the Milk River Basin; or

16. To modify or prevent modification of the Memorandum of Agreement between the Bureau of Reclamation and the Office of Indian Affairs Milk River Project Montana, I-1-Ind. 18725, July 8, 1946.

17. To prevent the water court from adjudicating claims to water rights Arising Under State Law on fee land within the Reservation.

18. Except as expressly provided herein, to modify the obligation of any agency of the United States pursuant to federal law.

19. To limit the ability of the State, the Tribes, or the United States to enforce any state, tribal, or federal laws or any common law rights relating to the protection of the environment.

20. To limit any existing, present, or future claims of the Tribes or the United States on behalf of the Tribes concerning water quality.

C. **Obligations of the United States Contingent.**

1. Notwithstanding any other language in this Compact, except as authorized under other provisions of federal law, the obligations of the United States under this Compact shall be contingent on ratification and necessary authorization by Congress.

2. The expenditure or advance of any money or the performance of any work by the United States or the Tribes pursuant to this Compact which may require appropriation of money by Congress or allotment of funds is contingent on such appropriation or allotment being made.

3. The State and the Tribes recognize that this Compact has not been approved by the United States or any agency thereof and ratification by the Montana legislature or ratification by the Tribal Council in no manner binds or restricts the discretion of the United States in the negotiation of all related matters.

D. **Obligations of the State Contingent.** The expenditure or advance of any money or the performance of any work by the State pursuant to this Compact which may require appropriation of money by the Montana Legislature or allotment of funds shall be contingent on such appropriation or allotment being made.

ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

A. **St. Mary Diversion Facilities.** The Parties agree that the delivery of water through the facilities of the Milk River Project at least at its existing or design capacities, and especially the St. Mary Diversion Facilities for diversion of water to the Milk River and use downstream from the Eastern Crossing, is essential to the permanent success of the Compact and the finality of the reserved water rights settlement and to the continued irrigation of lands in the Milk River Project. The Parties further understand and agree that the facilities of the Milk River Project, especially the St. Mary Diversion Facilities, are old and are in need of repair, rehabilitation, and to the extent feasible, restoration to their original design capacities. In recognition of the essential nature of the Milk River Project facilities, especially the St. Mary Diversion Facilities, the Parties agree to work with the United States, the Blackfeet Tribe, and the Milk River Project water users to obtain the necessary authorization and funding for the repair, rehabilitation, and restoration of the St. Mary Diversion facilities. The Parties agree that this Compact and its federal legislation may or may not be the appropriate means to fund this project. The Parties further agree that any discussion of the repair, rehabilitation, and restoration of the St. Mary Diversion facilities as part of the negotiation of the federal legislation ratifying this Compact shall be preceded by an invitation to the Blackfeet Tribe to participate as a party in such discussions.

B. **Mitigation of Impacts on the Milk River Project.**

1. The Parties agree that, as a result of development and use of the Tribal Water Right and protection of water use on tributaries, the Milk River Project and its water users will, at times, be adversely affected if no change is made to the Milk River System. The Parties agree that hydrologic and engineering analyses have identified the impacts and have demonstrated that such impacts can be mitigated through a number of alternatives. The Parties agree that such alternatives, together with such other alternatives as may be identified by the Parties or any other person or entity and by the Bureau of Reclamation, are currently included or will be included in the Bureau of Reclamation's Milk River Basin Regional Feasibility Study, authorized by Congress in Public Law 106-163, and will receive appropriate environmental analyses in that Study. The Parties further agree that funding for water efficiency improvements (Watershed Improvements) and water banking will be included in the total funding for the Compact. In addition to funding for voluntary efficiency improvements and for water banking, mitigation measures authorized and funded as a part of the Compact must mitigate at least to the level of 35,000 Acre-feet Per Year, or a larger amount on agreement by the Parties if information or improved modeling available at the time of completion of the Milk River Basin Regional Feasibility Study indicates that more is necessary for mitigation based on full development of the Tribal Water Right on the Milk River and tributary protection as contemplated in Section A.1. of Article III. The Parties agree to seek establishment of a fund and a schedule for incremental development of mitigation measures to assure that such measures are in place when needed to prevent impact from development of the Tribal Water Right. Mitigation measures identified by the Parties to be studied in the Feasibility Study include the following:

a. Pumped storage from the Milk River to Nelson Reservoir;

b. Enlargement of the storage capacity of Nelson Reservoir through the construction of a secondary dam or dike dividing the Reservoir into two separate controllable storage facilities;

c. Rehabilitation and restoration of the St. Mary Diversion Facilities;

d. Enlargement of Fresno Dam and Reservoir to restore storage capacity lost by siltation and obtain additional storage capacity;

e. Construction of a dam and reservoir on lower Peoples Creek on the Reservation and on other tributaries to the Milk River, including Thirtymile Creek;

f. Construction of new facilities to import water to the Milk River Basin, including but not limited to: the Virgelle diversion, direct importation from Lake Elwell; and importation from the Missouri River or Fort Peck Reservoir to Vandalia via Duck Creek;

g. Construction of facilities to improve the water quality of the Fish and Wildlife Service's Bowdoin National Wildlife Refuge and to allow the use of Bowdoin as a storage facility for mitigation of impacts of the Compact;

h. Such other mitigation alternatives which the Parties may identify to be included in the Bureau of Reclamation's Milk River Basin Regional Feasibility Study, or additional studies agreed to by the Parties.

2. On completion of the Milk River Basin Regional Feasibility Study, the Bureau of Reclamation, in consultation with the irrigation districts and the Parties, shall select the appropriate mitigation measures.

C. **Upper Peoples Creek Dam and Reservoir.** The Parties agree that, as a result of the protections provided to the Upper Peoples Creek water users in the Compact and the variable natural water supply in the Peoples Creek Basin, the water supply available for development of the Tribal Water Right in Peoples Creek may be limited. The Parties agree that such impacts can and shall be mitigated, in whole or in part, through the construction of a dam and reservoir for the benefit of the Tribes in the upper Peoples Creek Basin, if a dam and reservoir is determined to be feasible from an engineering, geologic, and environmental analysis. Accordingly, the Parties agree to seek authorization of appropriations, appropriations, and a schedule for development of a dam and reservoir on Peoples Creek for the benefit of the Tribes.

D. **State Contribution to Settlement.** The Parties agree that the State contribution to settlement shall be negotiated by the State, the Tribes, and the United States as part of the negotiations on the Federal legislation. The agreement to, expenditure, or advance of any State contribution which may require authorization and appropriation of money by the Montana Legislature or allotment of funds is contingent on such appropriation or allotment being made. Any local contribution to cost share shall be allocated to all Persons that benefit from the protections provided by the Compact.

E. **Federal Contribution to Settlement.** The Parties agree that the federal contribution to settlement shall be negotiated by the State, the Tribes, and the United States as part of the negotiations on the Federal legislation.

F. **State Lands on the Reservation.** The Parties agree to work together in the future to obtain the authorization necessary to exchange State lands on the Reservation for federal lands off the Reservation, and that any State lands acquired by the United States in an exchange shall be held in trust for the Tribes.

G. **Project Lands.** The Parties agree to work together to facilitate land classification and reclassification in the Milk River Project.

ARTICLE VII - FINALITY

A. **Ratification and Effectiveness of Compact.**

1. This Compact becomes Effective on the latest of the dates it is ratified by the Tribes, the State and by Congress. Following the first ratification by any party, the terms of this Compact may not be modified without the consent of the Parties. In the event of permanent or long term loss of the continued operation of the St. Mary Diversion facilities for diversion of water to the Milk River and use downstream from the Eastern Crossing, either due to loss, or to reallocation of water on agreement by the Parties, the Parties agree to enter negotiations on alternative remedies to supply water to portions of the Reservation served from the Milk River and to water rights Arising Under State Law within the Milk River Project. Minor loss or reallocation of water from the St. Mary Diversion facilities shall not be considered a permanent or long term loss. Until satisfactory completion of the above referenced negotiation or litigation and construction of water supply facilities to remedy the long term loss of the continued operation of the St. Mary Diversion facilities, the Tribes' diversion right from the Milk River shall be the amount developed for diversion at the time of the failure. All other provisions of the Compact shall remain in place. Should the Parties fail to reach agreement on alternative remedies within five (5) years of the permanent or long term loss of the continued operation of the St. Mary Diversion facilities, the Parties may seek a remedy in court for opening of the decree and adjudication of the portion of the Tribal Water Right in the Milk River Basin 40J. In opening the decree, there shall be no question of the validity of the Tribes' right to water currently developed.

2. Notwithstanding any other provision in this Compact, the Tribes reserve the right to withdraw as a party if:

a. Congress has not ratified this Compact and authorized appropriations within five (5) years from the date the Compact is ratified by the State;

b. The Tribes and United States do not reach agreement on the federal contribution to settlement; or

c. Appropriations are not made in the manner contemplated by the federal legislation ratifying this Compact.

d. The Parties do not reach agreement on the State contribution to settlement.

e. The State has not authorized appropriations within three (3) years from the date the Compact is ratified by the United States.

f. Appropriations are not made by the State in the manner contemplated by any agreement for contributions to settlement made pursuant to Section D. of Article VI of this Compact.

3. The Tribes may exercise their right to withdraw from the Compact under Section A.2. of Article VII of the Compact by sending to the Governor of Montana and to the Secretary of the Interior by certified mail a resolution of the Fort Belknap Community Council stating the Tribes' intent to withdraw and specifying a withdrawal date not sooner than thirty (30) days from the date of the resolution. On the date designated in the resolution for Tribal withdrawal, this Compact shall become null and void without further action by any party.

4. Improvements to the Milk River Project to mitigate the impact of potential development of the Tribal Water Right and of tributary protection is essential to the agreement of the State to this Compact. Thus, notwithstanding any other provision in this Compact, the State reserves the right to withdraw as a party if:

a. The Tribes and Congress have not ratified this Compact within five (5) years from the date the Compact is ratified by the State;

b. Congress requires a State contribution to settlement that exceeds the contribution authorized by the Montana Legislature or the contribution agreed to by the Parties if Congressional authorization precedes authorization by the Montana Legislature without the agreement of the State; or

c. Congress does not authorize and appropriate the federal share of funding for the modifications to the Milk River Project or other alternatives necessary to mitigate the impact of development of the Tribal Water Right as outlined generally in Section B. of Article VI, as enacted in the federal legislation ratifying this Compact and such modifications or other alternatives are not constructed

5. The State may exercise its right to withdraw from the Compact under Section A.4. of this Article VII of the Compact by sending to the Fort Belknap Tribal Chair and to the Secretary of the Interior by certified mail a letter from the Governor of Montana stating the intent of the State to withdraw and specifying a withdrawal date not sooner than thirty (30) days from the date of the letter. In considering exercise of the right to withdraw, the Governor shall consult with Persons affected by this Compact including the Milk River Joint Board of Control. On the date designated in the letter for State withdrawal, this Compact shall become null and void without further action by any party.

B. **Incorporation into Decrees.**

1. Within one hundred eighty (180) days of the date this Compact is ratified by the Tribes, the State, and Congress, whichever is latest, the Tribes, and/or the State, and/or the United States shall file, in the general stream adjudication initiated by the State pursuant to the provisions of § 85-2-702(3), MCA, a motion for entry of the proposed decree set forth in Appendix 1 as the decree of the water rights held by the United States in trust for the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community and Tribal members of the Fort Belknap Reservation. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of § 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666 or other provisions of federal law.

2. Consistent with § 3-7-224, MCA, and for the purposes of § 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to Article III, and Appendix 1, and may extend to other Sections of the Compact only to the extent that they relate to the determination of existing water rights. The final decree shall consist of Article III as displayed in Appendix 1, and such other information as may be required by § 85-2-234, MCA. Nevertheless, pursuant to

§ 85-2-702(3), MCA, the terms of the entire Compact must be included in the preliminary decree without alteration for the purpose of notice.

3. Concurrent with filing of the motion for entry of the proposed decree, the Parties shall seek appointment of a water commissioner or commissioners pursuant to Title 85, Chapter 2, Parts 1-3 of the Montana Code Annotated in the appropriate state district court pursuant to § 85-2-406, MCA, and as set forth in Appendix 1, to enforce water use pursuant to decrees of the Water Court, permits issued by DNRC, contracts issued by the BOR, and use pursuant to Tribal law, from the mainstem of the Milk River downstream from the Eastern Crossing pursuant to this Compact, federal, Tribal, and State law, and the final decrees. The Parties shall ask the district court to stay the appointment pending issuance of preliminary decrees on the Milk River Basin downstream from the Eastern Crossing. The request for appointment of a water commissioner by the Parties shall be sufficient to meet the requirements of § 85-5-101, MCA pertaining to the persons who may request appointment of a water commissioner. Notwithstanding the requirement of yearly appointment of a water commissioner under state law, the Parties shall seek, and the district court may appoint, a permanent water commissioner or commissioners. The petition by the Parties does not preclude the right of any Person to seek appointment of a water commissioner or enforcement of water rights pursuant to applicable law.

4. The Parties agree to seek a mechanism for funding the Tribal share of the cost of the water commissioner or commissioners in the federal legislation ratifying the Compact.

5. Water users with rights to divert water from the mainstem of the Milk River downstream from the Eastern Crossing under authority of State, federal or Tribal law, shall notify the water commissioner within a reasonable period in advance of a need to divert water.

6. Any Person authorized to use water from the mainstem of the Milk River Basin downstream from the Eastern Crossing objecting to the distribution of water by the water commissioner, or to a use of water by another Person, may use the remedies provided by § 85-5-301, MCA.

7. In the distribution of water, the water commissioner or commissioners shall be bound by the decrees of the water court, however, the commissioner or commissioners may use the databases developed pursuant to Section C.3.d. of Article IV to facilitate understanding of the distribution of water within a particular water right.

8. Nothing in this Compact shall prevent the holders of water rights Arising Under State Law or Tribal Water Rights with a source on the mainstem of the Milk River below the Eastern Crossing from agreeing to an alternative water distribution plan that allows sharing of shortages, distribution of shortage, operation of storage, or exchange of storage in a manner other than priority. Such agreement shall be enforced by the court appointing the water commissioner.

C. **Disposition of Federal Suit.**

1. On issuance of a final decree by the Montana Water Court or its successor, and the completion of any direct appeals therefrom, or on expiration of the time for filing any such appeal, the United States, the Tribes, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed.R.Civ.P., to dismiss without prejudice the claims of the Tribes, Tribal members, and Allottees and any claims made by the United States for benefit of the Tribes, Tribal members, and Allottees in United States v. Aageson, No. CIV-79-21-GF (filed April 5, 1979). The case may only be resumed if the State or Tribes exercise their rights under Section A. of this Article VII.

2. The Decree shall be filed by the Parties as a consent decree in Aageson, or in federal court as a new proceeding after the dismissal of Aageson conditional on agreement by the Parties to seek the necessary State, Tribal, and federal legislation to implement the remaining provisions of the Compact, if it is finally determined in a judgment binding on the State of Montana that the state courts lack jurisdiction over, or that the state court proceedings are inadequate to adjudicate some or all of the water rights asserted in Aageson.

D. **Settlement of Tribal Water Right Claims.**

1. The water rights and other benefits confirmed to the Tribes in this Compact are in full and final satisfaction of and are intended to be in replacement of and substitution for all claims to water or to the use of water by the Tribes, Tribal members, and Allottees and the United States on behalf of the Tribes, Tribal members, and Allottees existing on the Effective Date of

this Compact, including federal reserved water rights claims based on or recognized in Winters v. United States, 207 U.S. 564 (1908), within the State of Montana.

2. In consideration of the rights confirmed to the Tribes, Tribal members, and Allottees in this Compact, and of performance by the State and the United States of all actions required by this Compact, and on entry of a final order issuing the decree of the Tribal Water Right held in trust by the United States as quantified in this Compact and displayed in Appendix 1, and except for water rights, benefits and uses confirmed in this Compact, the Tribes and the United States as trustee for the Tribes, Tribal members, and Allottees hereby waive, release, and relinquish any and all claims to water rights or to the use of water within the State existing on the Effective Date of this Compact.

3. Any claim to water by the Tribes, Tribal members, or Allottees within the Reservation shall be satisfied out of the Tribal Water Right confirmed by this Compact.

E. **Settlement of Tribal Claims Against the United States.** Waiver of claims against the United States, by the Tribes and Tribal members shall be as provided by Congress.

F. **Binding Effect.** After the Effective Date of this Compact and entry of a final decree, its terms shall be binding on:

1. The State and any Person or entity using, claiming or in any manner asserting any right under the authority of the State to the use of water in Montana; provided that, the validity of consent, ratification, or authorization by the State is to be determined by Montana law;

2. The Tribes and any Person or entity using, claiming or in any manner asserting any right to the use of the Tribal Water Right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribes or Tribal members, or any rights arising under tribal law; provided that, the validity of consent, ratification or authorization by the Tribes is to be determined by Tribal law; and

3. The United States and any Person or entity using, claiming or in any manner asserting any right under the authority of the United States to the use of water in Montana; provided that, the validity of consent, ratification or authorization by the United States is to be determined by federal law;

ARTICLE VIII - LEGISLATION/DEFENSE OF COMPACT

A. **State Legislation.** The State and Tribes agree to seek ratification of the Compact by the Montana Legislature and any additional state legislation necessary to effectuate the Compact.

B. **Federal Legislation.** The State and Tribes agree to seek ratification of the Compact by Congress and any additional federal legislation necessary to effectuate the Compact.

C. **Tribal Legislation.** The State and Tribes agree to seek ratification of the Compact by the Fort Belknap Community Council and any Tribal legislation necessary to effectuate the Compact.

D. **Defense of the Compact.** The Parties agree to defend the Compact from all challenges and attacks and in all proceedings pursuant to Sections B. and C. of Article VII, and agree that no provision of the Compact shall be modified as to substance except as may be provided in the Compact, or by agreement among the Parties.

IN WITNESS WHEREOF the representatives of the State of Montana, the Fort Belknap Indian Community of the Fort Belknap Reservation, and the United States, have signed this Compact on the ____ day of ________, 20__.

History: En. Sec. 1, Ch. 256, L. 2001.

85-20-1002. Findings and purpose. (1) It is the policy of the state to seek negotiated settlements of federal and Indian reserved water rights claims in Montana under Title 85, chapter 2, part 7.

(2) Pursuant to this policy, the reserved water rights compact commission commenced negotiations with the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation and the United States.

(3) A compact, 85-20-1001, has been agreed to between the state of Montana and the Fort Belknap Indian Community of the Fort Belknap Reservation that, among other things, provides an allocation of water to the tribes in settlement of their water right claims and provides protection for certain water rights arising under state law. Approval of the compact by the United States requires ratification by congress.

(4) (a) For purposes of implementing the compact, 85-20-1002 through 85-20-1008:
(i) establish accounts necessary to meet certain obligations agreed to in the compact;
(ii) provide a structure for the issuance of grants and loans; and
(iii) provide for the facilitation of the development of an economic development plan.

(b) Funding for the accounts established under 85-20-1004, 85-20-1005, and 85-20-1007 is subject to state and federal cost-share negotiations, approval of state cost-share by the legislature, and approval of federal cost-share by the United States congress.

(5) The state's obligation to provide funding to implement the compact and to satisfy the state's cost-share, once approved by the legislature, must be conditioned on:

(a) final court approval of a decree of the water rights of the tribes as set forth in Article VII, sections B. through D., of the compact; and

(b) validity of the compact under Article VII, section A., of the compact.

(6) Funds appropriated to accounts established under 85-20-1004, 85-20-1005, and 85-20-1007 and interest on appropriated funds are not available for expenditure unless the conditions, provided in subsection (5), are met.

(7) If a court does not approve a final decree, if the compact becomes null and void, or if one of the parties withdraws from the compact, the funds appropriated by the state to accounts established in 85-20-1004, 85-20-1005, and 85-20-1007 must revert to the general fund and any federal funds must be returned to the United States treasury. If a portion of the funding or interest on funding provided in 85-20-1004, 85-20-1005, and 85-20-1007 has been expended prior to the return of funds to the general fund, any claim against the state by the tribes or by the United States on behalf of the tribes for adjudication of the water rights of the tribes must be offset by the amount of the expenditures of state funds or interest on state funds.

History: **En. Sec. 2, Ch. 256, L. 2001.**

85-20-1003. Definitions. The definitions provided for in 85-20-1001 apply to 85-20-1002 through 85-20-1008. The absence of capitalization of defined terms in 85-20-1002 through 85-20-1008 does not affect the meaning or application of a defined term.

History: **En. Sec. 3, Ch. 256, L. 2001.**

85-20-1004. Mitigation account. (1) A private purpose trust account, called the mitigation account, is established, as provided for in 17-2-102, for deposit of funds and interest on funds appropriated by the state for mitigation measures required by Article VI of the compact.

(2) On approval of a final decree pursuant to Article VII of the compact, the funds and interest on funds in the mitigation account must be made available to the department of natural resources and conservation to cover the state's cost-share for construction of mitigation measures chosen on completion of a feasibility study and appropriate state and federal environmental review and on consideration of the economic development plan authorized by 85-20-1008.

History: **En. Sec. 4, Ch. 256, L. 2001; amd. Sec. 128, Ch. 114, L. 2003; amd. Sec. 1, Ch. 440, L. 2009.**

85-20-1005. Watershed improvement trusts. (1) A permanent fund account, called the state Milk River watershed improvement trust, is established, as provided for in 17-2-102, for deposit of funds appropriated pursuant to the compact for a permanent trust. Interest income may be used by the Milk River coordinating committee established pursuant to the compact for the purpose of allocating grants and loans.

(2) A permanent fund account, called the federal Milk River watershed improvement trust, is established, as provided for in 17-2-102, for receipt of federal funds appropriated for a permanent trust. Interest income may be used by the Milk River coordinating committee established pursuant to the compact for the purpose of allocating grants and loans.

(3) The state and federal Milk River watershed improvement trusts must be collectively referred to as the Milk River watershed improvement trusts.

History: **En. Sec. 5, Ch. 256, L. 2001; amd. Sec. 129, Ch. 114, L. 2003.**

85-20-1006. Terms and conditions of loan. A Milk River watershed improvement trusts loan is subject to the following terms and conditions:

(1) Except for loan agreements with an Indian tribe, the DNRC shall obtain a security interest in real estate that would be obtained by a reasonable, careful, and prudent lender.

(2) A current appraisal of real estate offered as security and a commitment for title insurance on that land must be secured by the borrower at the borrower's expense. All costs incident to the loan and loan closing must be paid by the borrower.

(3) For a loan agreement with an Indian tribe, security must be pursuant to the appropriate federal authority to secure a loan on trust land, and with an allottee, security must be pursuant to 25 U.S.C. 483A.

(4) The term of the loan may not be greater than the life of the project and may not exceed 30 years.

History: En. Sec. 6, Ch. 256, L. 2001.

85-20-1007. Peoples Creek minimum flow account. (1) A state special revenue account, called the Peoples Creek minimum flow account, is established, as provided for in 17-2-102, for deposit of funds and interest on funds for efficiency improvements and bypass structures for irrigation upstream from the Fort Belknap Reservation in the Peoples Creek Basin 40I and for a reservoir on the Reservation for the purpose of improving minimum stream flow.

(2) On approval of a final decree pursuant to Article VII of the compact, the funds and interest on funds in the Peoples Creek minimum flow account must be made available to the water users and the tribes to cover the cost of construction of improvements as agreed to in the state and federal cost-share negotiations.

History: En. Sec. 7, Ch. 256, L. 2001; amd. Sec. 130, Ch. 114, L. 2003; amd. Sec. 1, Ch. 47, L. 2011.

85-20-1008. Economic development plan. (1) The DNRC is directed to facilitate development of an economic development plan focused on future use of water and currently irrigated land, including but not limited to use of water and irrigated land for irrigation, industrial, recreational, fisheries, and habitat purposes in the Milk River basin.

(2) The Milk River regional feasibility study examines alternative measures for mitigation of impacts of development of the tribal water right for the purpose of determining feasibility and environmental impact. The purpose of the economic development plan is to supplement the federal studies and provide information to assist in choosing mitigation measures by examining the long-term economic potential of water use in the Milk River basin.

(3) At a minimum, the DNRC shall include irrigation districts, individual irrigators, conservation districts, county governments, and municipalities in the development of the economic development plan.

History: En. Sec. 8, Ch. 256, L. 2001.

Part 11

United States of America, Department of Agriculture, Agricultural Research Service, Fort Keogh Livestock and Range Research Laboratory-Montana Compact

85-20-1101. United States of America, Department of Agriculture, Agricultural Research Service, Fort Keogh Livestock and Range Research Laboratory-Montana compact ratified. The Compact entered into by the State of Montana and the United States of America, Department of Agriculture, Agricultural Research Service, Fort Keogh Livestock and Range Research Laboratory and filed with the Secretary of State of the State of Montana under the provisions of 85-2-702, MCA, on March 27, 2007, is ratified. The compact is as follows:

WATER RIGHTS COMPACT
STATE OF MONTANA
UNITED STATES OF AMERICA, DEPARTMENT OF AGRICULTURE,
AGRICULTURAL RESEARCH SERVICE,
FORT KEOGH LIVESTOCK AND RANGE RESEARCH LABORATORY

This Compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims existing on the Effective Date of This Compact to reserved water rights in the State of Montana for the United States Fort Keogh Livestock and Range Research Laboratory administered by the U.S. Department of Agriculture, Agricultural Research Service.

RECITALS

WHEREAS, the State of Montana, in 1979, pursuant to Title 85, chapter 2, of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, 85-2-703, MCA, provides that the State may negotiate compacts concerning the equitable division and apportionment of water between the State and its people and the federal government with claims to non-Indian reserved water rights within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the reservation of lands for the United States Fort Keogh Livestock and Range Research Laboratory in the State of Montana;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-17 (1968);

WHEREAS, the Secretary of the Agriculture, or a duly designated official of the United States Department of the Agriculture, has authority to execute this Compact on behalf of the United States Department of Agriculture pursuant to 7 U.S.C. 2201 note, Section 1(a);

NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE I
DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

(1) "Abstracts" mean the copy of the documents entitled "Abstracts of United States Fort Keogh Livestock and Range Research Laboratory Water Rights" referenced in this Compact as Appendices 2, 3, 4, 6, and 7.

(2) "Acre-Feet per Year" means an annual quantity of water measured in acre-feet over a period of a year. "Acre-foot" or "Acre-feet" means the amount of water necessary to cover 1 acre to a depth of 1 foot and is equivalent to 43,560 cubic feet of water.

(3) "Animal Unit" means a measure of livestock numbers, where one Animal Unit equals 1 beef cow, 1 beef cow and calf, 3 pigs, 5 sheep, or 300 chickens. One dairy cow or 1 horse equals 1.5 Animal Units.

(4) "Consumptive" means a use of water which removes water from the source of supply such that the quality or quantity is reduced or the timing of return delayed, making it unusable or unavailable for use by others, and includes evaporative loss from impoundments or natural lakes.

(5) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

(6) "Effective Date of This Compact" means the date of the ratification of the Compact by the Montana legislature, written approval by the United States Department of Agriculture, or written approval by the United States Department of Justice, whichever is latest.

(7) "Groundwater" means water that is beneath the ground surface.

(8) "Parties" means the State of Montana and the United States.

(9) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

(10) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "State" means the Director of the Department or the Director's designee.

(11) "Stock Use" means the use of water for livestock, including but not limited to cattle, horses, pigs, sheep, and chickens. This term does not include use of water for domestic animals, such as dogs or cats, or wild animals.

(12) "Supplemental Right" means a separate water right for the same purpose, owned by the United States, and used on a common place of use.

(13) "United States" means the federal government and all officers, agencies, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of Agriculture or the Secretary's designee.

(14) "United States Fort Keogh Livestock and Range Research Laboratory" means those lands located in the State of Montana that were withdrawn from disposition and reserved by the Act of April 15, 1924, 43 Stat. 99. The lands that comprise the United States Fort Keogh Livestock and Range Research Laboratory are depicted on the map attached as Appendix 1 to this Compact.2

(15) "Water Spreading" means surface flood irrigation involving the diversion of occasional (flood or runoff) surface water from natural, usually nonperennial, watercourses by means of dams, dikes, or ditches or a combination of these. It differs from conventional irrigation because it is totally dependent on and regulated by the availability of water, not crop needs.

ARTICLE II
WATER RIGHT

The Parties agree that the following water rights are in settlement of all of the United States' federal reserved water rights for the United States Fort Keogh Livestock and Range Research Laboratory.

A. **Purpose of Reservation for the United States Fort Keogh Livestock and Range Research Laboratory.**

The United States Fort Keogh Livestock and Range Research Laboratory was created for the purpose of stock raising experiments and growing of forage crops in connection therewith. Act of April 15, 1924, 43 Stat. 99. The United States' federal reserved water rights for the United States Fort Keogh Livestock and Range Research Laboratory shall be used only for purposes relating to its experimental research regarding stock raising and crop growing on United States Fort Keogh Livestock and Range Research Laboratory lands.

B. **Quantification.**

Subject to the terms of Article III, the United States shall have the right to water for the following purposes from the sources identified on United States Fort Keogh Livestock and Range Research Laboratory lands.

1. **Irrigation Use.**

(a) **Current Irrigation Use From the Yellowstone River — Water Court Basin 42KJ.**

(i) The United States has a federal reserved water right to withdraw or divert water from the Yellowstone River in Water Court Basin 42KJ of 58 cubic feet per second for current irrigation use on 1,523 acres within United States Fort Keogh Livestock and Range Research Laboratory lands. The specific elements of this right are set forth in the Abstract attached as Appendix 2 to this Compact. Provided that, the reserved right described in this subsection is a Supplemental Right to any United States' water right under state law for irrigation use on United States Fort Keogh Livestock and Range Research Laboratory lands with a priority date senior to the reserved right described in this subsection.

(ii) The United States has a federal reserved water right for irrigation use by Water Spreading on Reservation Creek, a tributary of the Yellowstone River, in Water Court Basin 42KJ for current irrigation use on 450 acres within United States Fort Keogh Livestock and Range Research Laboratory lands. The specific elements of this right are set forth in the Abstract attached as Appendix 3 to this Compact.

(b) **Current Irrigation Use From the Tongue River Drainage — Water Court Basin 42C.**

The United States has a federal reserved water right for irrigation use by Water Spreading on an unnamed tributary of the Tongue River in Water Court Basin 42C for current irrigation use on 203 acres within United States Fort Keogh Livestock and Range Research Laboratory lands. The specific elements of this right are set forth in the Abstract attached as Appendix 4 to this Compact.

(c) **Future Irrigation Use From the Yellowstone River — Water Court Basin 42KJ.**

The United States has a federal reserved water right to withdraw or divert water from the Yellowstone River, a tributary, or Groundwater in Water Court Basin 42KJ for future irrigation use on up to a total of additional 620 acres on United States Fort Keogh Livestock and Range Research Laboratory lands with a combined flow rate of up to a total additional 23 cubic feet per second to fulfill the purposes of the United States Fort Keogh Livestock and Range Research Laboratory.

2. **Stock Use.**

(a) **Current Stock Use.**

The United States has federal reserved water rights for Consumptive use for stockwatering purposes at the locations identified in the table attached as Appendix 5 for the volume of water specified from each source, provided that the total current Stock Use on United States Fort Keogh Livestock and Range Research Laboratory lands shall not exceed the historic maximum of 3,000 Animal Units. The specific elements of these rights are set forth in the Abstracts attached as Appendix 6 to this Compact.

(b) **Future Stock Use.**

In addition to the current Stock Use described in Article II, section B.2.(a), the United States has federal reserved water rights for Consumptive use for stockwatering purposes at the same locations and the same volume of water as described in Article II, section B.2.(a) for future Stock Use on United States Fort Keogh Livestock and Range Research Laboratory lands not to exceed an additional 2,000 Animal Units.

3. **Administrative Uses.**

(a) **Current Administrative Uses.**

The United States has federal reserved rights for Consumptive use for current administrative uses on United States Fort Keogh Livestock and Range Research Laboratory lands totaling 26.70 Acre-Feet per Year. The specific elements of these rights are set forth in the Abstracts attached as Appendix 7 to this Compact.

(b) **Future Administrative Uses.**

The United States has federal reserved water rights from surface water or Groundwater for Consumptive use for future administrative uses up to a total additional volume of 18 Acre-Feet per Year to fulfill the purposes of the United States Fort Keogh Livestock and Range Research Laboratory. The types of use of the United States' federal reserved water rights for administrative uses may include but are not limited to domestic, administrative, storage, dust abatement, reclamation, and research.

4. **Emergency Fire Suppression.**

The use of water for emergency fire suppression benefits the public and is necessary for the purposes of the United States Fort Keogh Livestock and Range Research Laboratory. The United States may, as part of its reserved water right, divert or withdraw water for fire suppression on the United States Fort Keogh Livestock and Range Research Laboratory lands as needed and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be considered an exercise of the United States' water rights for Consumptive use.

5. **Period of Use.**

(a) The period of use of the United States' federal reserved water rights for Consumptive use set forth in Article II, sections B.1.(a)(i) shall be from March 15 to November 19 of each year.

(b) The period of use of the United States' federal reserved water rights for Consumptive use set forth in Article II, sections B.1.(a)(ii) and B.1.(b) shall be from January 1 to December 31 of each year.

(c) The period of use of the United States' federal reserved water rights for Consumptive use set forth in Article II, sections B.2. through B.4. shall be from January 1 to December 31 of each year.

6. **Priority Date.**

The priority date for all federal reserved water rights for the United States Fort Keogh Livestock and Range Research Laboratory is April 15, 1924.

ARTICLE III
IMPLEMENTATION

A. **Abstracts.**

Concurrent with this Compact, the Parties have prepared Abstracts, copies of which are attached as Appendices 2, 3, 4, 6, and 7 to this Compact, which specifically identify all of the United States' current use of water for the United States Fort Keogh Livestock and Range Research Laboratory described in this Compact and quantified in accordance with this Compact. The Parties prepared the Abstracts to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstracts are subject to the terms of this Compact.

B. **Enforcement and Administration of Water Right.**

1. The United States, the State, or a holder of a water right recognized under state law may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' reserved water rights described by this Compact and a holder of a water right recognized under state law. Resolution of the controversy shall be governed by the terms of this Compact where applicable or, to the extent not applicable, by appropriate state or federal law.

2. For purposes of the administration of federal reserved water rights provided for in Article II, the United States agrees that a water commissioner or other official appointed by a court of competent jurisdiction may enter the United States Fort Keogh Livestock and Range Research Laboratory lands to collect data, inspect structures for the diversion and measurement of water, and distribute the federal reserved water rights described in Article II. The terms of entry or distribution may be limited, as appropriate, by an order of a court of competent jurisdiction. Nothing herein waives the right of the United States, with respect to a specific action or anticipated action by a water commissioner or other official under this subsection, to seek terms of entry or distribution consistent with purposes of the United States Fort Keogh Livestock and Range Research Laboratory including but not limited to terms of entry that respect the integrity of ongoing or proposed research, or to seek terms of entry or distribution consistent with federal law if in conflict with state law.

3. The Department may enter the United States Fort Keogh Livestock and Range Research Laboratory lands upon which a federal reserved water right is described in Article II for the purposes of data collection on United States Fort Keogh Livestock and Range Research Laboratory water diversions or water uses. The Department shall notify the United States by certified mail or in Person at least 24 hours prior to entry.

4. The federal reserved water right described in Article II, section B.1.(b) shall not be the basis of a call on a water right recognized under state law and shall not be enforceable by the United States in an administrative or judicial proceeding except as needed to protect against a call from a junior water right under state law.

C. **Use of Federal Reserved Water Rights.**

1. **Federal Reserved Water Rights.**

The reserved rights of the United States described in this agreement are federal water rights. Nonuse of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment or forfeiture of those rights. The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the United States Fort Keogh Livestock and Range Research Laboratory.

2. **Development of Future Uses.**

The United States, without prior approval of the Department, may develop a future use after the Effective Date of This Compact as described in Article II, sections B.1.(c), B.2.(b), and B.3.(b), provided that:

(a) the purpose of use is for the use authorized under Article II, sections B.1.(c), B.2.(b), or B.3.(b);

(b) the total quantity of water shall not exceed the amount set forth in Article II, sections B.1.(c), B.2.(b), or B.3.(b);

(c) the source of supply shall be restricted as set forth in Article II, section B.1.(c);

(d) any Groundwater development pursuant to Article II, section B.1.(c) in Section 8, Township 7 North, Range 47 East, Custer County, shall not interfere with the exercise of water right number 42C 183101-00 or 42C 183102-00; and

(e) the use shall not adversely affect a senior water right recognized under state law.

D. **Change in Use of Federal Reserved Water Rights.**

1. **Irrigation Use.**

The United States may change its federal reserved water rights for irrigation use, provided that:

(a) the action shall be in fulfillment of the purposes of the United States Fort Keogh Livestock and Range Research Laboratory described in Article II, section A;

(b) the use of water is irrigation use;

(c) the total use shall not exceed the total acreage, and flow rate or volume described in Article II, sections B.1.(a) and B.1.(c) and the Abstracts attached as Appendices 2 and 3 to this Compact;

(d) the source of supply shall be restricted to the source of supply set forth in Article II, sections B.1.(a) and B.1.(c);

(e) the federal reserved water right for irrigation use described in Article II, section B.1.(b) shall not be subject to change; and

(f) the change shall not adversely affect a water right recognized under state law.

2. **Stock Use.**

The United States may change its federal reserved water rights for Stock Use, provided that:

(a) the action shall be in fulfillment of the purposes of the United States Fort Keogh Livestock and Range Research Laboratory described in Article II, section A;

(b) the total Stock Use shall not exceed the amount of water or number of Animal Units described in Article II, section B.2.; and

(c) the change shall not adversely affect a water right recognized under state law.

3. **Administrative Use.**

The United States may change its federal reserved water rights for administrative use, provided that:

(a) the action shall be in fulfillment of the purposes of the United States Fort Keogh Livestock and Range Research Laboratory described in Article II, section A;

(b) the total administrative use shall not exceed the amount of water described in Article II, section B.3.; and

(c) the change shall not adversely affect a water right recognized under state law.

4. **Emergency Fire Suppression.**

The United States' federal reserved water right to divert or withdraw water for emergency fire suppression as described in Article II, section B.4, shall not be changed to any other use.

E. **Reporting Requirements.**

The United States shall provide a report to the Department on an annual basis, or on a periodic basis agreed to by the Parties, containing specific information on:

1. the development of new uses as described in Article II, sections B.1.(c), B.2.(b), and B.3.(b);
2. changes in use as described in Article III, section D; and
3. the source of supply, the dates of use, and the estimated amount of water used for emergency fire suppression as described in Article II, section B.4.

ARTICLE IV
GENERAL PROVISIONS

A. **No Effect on Tribal Rights or Other Federal Reserved Water Rights.**

1. The relationship between the water rights of the United States described herein and any rights to water of an Indian Tribe, or of any federally derived water right of an individual, or of the United States on behalf of such Tribe or individual shall be determined by the rule of priority.

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the United States Fort Keogh Livestock and Range Research Laboratory.

3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any Indian Tribes and tribal members.

4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian Tribe regarding boundaries or property interests.

B. **General Disclaimers.**

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State or of the United States and any other state;

2. as a waiver by the United States on behalf of the Agricultural Research Service of its right under state law to raise objections in state court to individual water rights claimed pursuant to the State Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact or any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the State Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;

4. to establish a precedent for other agreements between the State and the United States or an Indian Tribe;

5. to determine the relative rights, inter sese, of Persons using water under the authority of state law or to limit the rights of the Parties or a Person to litigate an issue not resolved by this Compact;

6. to create or deny substantive rights through headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of This Compact;

8. to limit the authority of the United States to manage its lands in accordance with the Constitution, statutes, and regulations of the United States;

9. to affect in any manner the entitlement to or quantification of other federal water rights;

10. to be binding on the United States with regard to the water rights of the United States for any area other than the United States Fort Keogh Livestock and Range Research Laboratory;

11. to affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact;

12. to prevent the United States from seeking a permit to appropriate water under state law for use within or outside the United States Fort Keogh Livestock and Range Research Laboratory boundaries.

C. **Reservation of Rights.**

The Parties expressly reserve all rights not granted, described, or relinquished in this Compact.

D. **Severability.**

The provisions of this Compact are not severable.

E. **Multiple Originals.**

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

F. **Notice.**

Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as the Director may designate in writing.

2. United States: Upon the Secretary of Agriculture, the United States Fort Keogh Livestock and Range Research Laboratory Research Leader, and such other officials as the Secretary may designate in writing.

ARTICLE V
FINALITY OF COMPACT

A. **Binding Effect.**

1. The Effective Date of This Compact is the date of the ratification of this Compact by the Montana legislature, written approval by the United States Department of Agriculture, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on the Parties.

2. Following the effective date, this Compact shall not be modified without the consent of both Parties. Either party may seek enforcement of this Compact in a court of competent jurisdiction.

3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all Persons bound by the final order of the court.

4. If an objection to this Compact is sustained pursuant to 85-2-703, MCA, and 85-2-702(3), MCA, this Compact shall be voidable by action of and without prejudice to either party.

B. **Filing Compact with State Court.**

Subject to the following stipulations and within one hundred eighty (180) days of the Effective Date of This Compact, the Parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. 666, for approval in accordance with state law and for the incorporation of the water rights described in this Compact into a decree or decrees entered therein. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

C. **Dismissal of Filed Claims.**

At the time the state courts approve the water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all water right claims specified in Appendix 8 of this Compact for the United States Fort Keogh Livestock and Range Research Laboratory. If this Compact is not approved or a water right described herein is not confirmed, these claims shall not be dismissed.

D. **Settlement of Claims.**

The Parties intend that the water rights described in this Compact are in full and final settlement of the federal reserved water right claims for the United States Fort Keogh Livestock and Range Research Laboratory land in Montana described in this Compact and administered by the Agricultural Research Service on the Effective Date of This Compact. On the Effective Date of This Compact, the United States hereby and in full settlement of any and all claims to federal reserved water rights by the United States, including all claims that the Agricultural Research Service filed or could have filed as part of the ongoing statewide adjudication process, relinquishes forever all claims to federal reserved water rights within the State of Montana for the United States Fort Keogh Livestock and Range Research Laboratory. The State agrees to recognize the water rights described and quantified herein and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the State. Nothing in this Compact precludes the Agricultural Research Service from filing for future water use permits under Montana state law.

E. **Defense of Compact.**

The Parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the _____ day of _____________, 200__.

History: En. Sec. 1, Ch. 79, L. 2007.

Part 12
United States of America, Department of Agriculture, Agricultural Research Service, Sheep Experiment Station-Montana Compact

85-20-1201. United States of America, Department of Agriculture, Agricultural Research Service, Sheep Experiment Station-Montana Compact ratified. The Compact entered into by the State of Montana and the United States of America, Department of Agriculture, Agricultural Research Service, Sheep Experiment Station, and filed with the secretary of state of the State of Montana under the provisions of 85-2-702, MCA, on March 27, 2007, is ratified. The compact is as follows:

WATER RIGHTS COMPACT
STATE OF MONTANA
UNITED STATES OF AMERICA, DEPARTMENT OF AGRICULTURE, AGRICULTURAL RESEARCH SERVICE, SHEEP EXPERIMENT STATION

This Compact is entered into by the State of Montana ("State") and the United States of America ("United States") to settle for all time any and all claims existing on the Effective Date of this Compact to reserved water rights in the State for the United States Sheep Experiment Station ("U.S. Sheep Experiment Station") administered by the United States Department of Agriculture, Agricultural Research Service.

RECITALS

WHEREAS, the State, in 1979, pursuant to Title 85, chapter 2, of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State, including all federal reserved and appropriative water rights;

WHEREAS, 85-2-703, MCA, provides that the State may negotiate compacts concerning the equitable division and apportionment of water between the State and its people and the federal government with claims to non-Indian reserved water rights within the State;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the reservation of lands for the U.S. Sheep Experiment Station in the State;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516 and 517;

WHEREAS, the Secretary of Agriculture, or a duly designated official of the United States Department of Agriculture, has authority to execute this Compact on behalf of the United States Department of Agriculture pursuant to 7 U.S.C. 2201 note, Section 1(a).

NOW, THEREFORE, the State and the United States agree as follows:

ARTICLE I
DEFINITIONS

For purposes of this Compact only, the following definitions apply:

(1) "Abstracts" means the copy of the document entitled "Abstracts of U.S. Sheep Experiment Station Water Rights" referenced in this Compact as Appendix 3.

(2) "Consumptive" means a use of water that removes water from the source of supply such that the quality or quantity is reduced or the timing of return delayed, making it unusable or unavailable for use by others, and includes evaporative loss from impoundments or natural lakes.

(3) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

(4) "Effective Date of this Compact" means the date of the ratification of the Compact by the Montana legislature, written approval by the United States Department of Agriculture, or written approval by the United States Department of Justice, whichever is latest.

(5) "Groundwater" means water that is beneath the ground surface.

(6) "Parties" means the State and the United States.

(7) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

(8) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "State" means the Director of the Department or the Director's designee.

(9) "United States" means the federal government and all officers, agencies, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of Agriculture or the Secretary's designee.

(10) "U.S. Sheep Experiment Station" means those lands within Montana that were withdrawn and reserved by Executive Order No. 3767, dated December 19, 1922, as depicted on the map attached as Appendix 1 to this Compact. For purposes of this Compact, it does not

include portions of the U.S. Sheep Experiment Station located in the State of Idaho that the United States owns and the U.S. Department of Agriculture, Agricultural Research Service, administers.

ARTICLE II
WATER RIGHT

The Parties agree that the following water rights are in settlement of all of the United States' federal reserved water rights for the U.S. Sheep Experiment Station.

A. **Purpose of Reservation for the U.S. Sheep Experiment Station.**

The U.S. Sheep Experiment Station was created for agricultural experiment purposes, and the land in Montana was set aside for experimental sheep grazing by Executive Order No. 3767, dated December 19, 1922.

B. **Quantification.**

Subject to the terms of Article III, the United States has federal reserved water rights from sources located on the U.S. Sheep Experiment Station as described below.

1. **Current Stockwater Use.**

The United States has federal reserved rights on U.S. Sheep Experiment Station lands for Consumptive use for stockwatering purposes at the 53 locations identified in the table attached as Appendix 2 for the volume of water identified. Abstracts for each of these federal reserved water rights are attached as Appendix 3 to this Compact. In the event of a discrepancy between the summary of U.S. Sheep Experiment Station water rights in Appendix 2 and the Abstracts contained in Appendix 3, the Abstracts in Appendix 3 control. The period of use of the United States' water rights for Consumptive use set forth in Article II, section B.1., shall be from May 1 to October 31 of each year.

2. **Future Uses.**

In addition to the current stockwater uses identified in Article II, section B.1., the United States has a federal reserved water right to develop uses of surface water or Groundwater consistent with Article II, section B.5., to fulfill the purposes of the U.S. Sheep Experiment Station up to a total additional volume of 15 acre feet per year for uses within the U.S. Sheep Experiment Station.

3. **Emergency Fire Suppression.**

The use of water for emergency fire suppression benefits the public and is necessary for the purposes of the U.S. Sheep Experiment Station. The United States has a federal reserved water right to divert or withdraw water for fire suppression on U.S. Sheep Experiment Station lands as needed and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be considered an exercise of the United States' water rights for current or future uses described in Article II, section B.1. and 2.

4. **Priority Date.**

The priority date for all federal reserved water rights for the U.S. Sheep Experiment Station is December 19, 1922.

5. **Purposes.**

The United States' reserved water rights for the U.S. Sheep Experiment Station shall be used for purposes as described in Article II, section A. The types of use may include but are not limited to: stockwater, domestic, irrigation, storage, dust abatement, reclamation, and research.

ARTICLE III
IMPLEMENTATION

A. **Abstracts.**

Abstracts for all the United States' federal reserved water rights for current stockwater uses are set forth in Appendix 3. The Parties prepared the Abstracts to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstracts are subject to the terms of this Compact.

B. **Enforcement and Administration of Water Right.**

1. The United States, the State, or a holder of a water right recognized under state law may petition a state or federal court of competent jurisdiction for relief when a controversy arises

between the United States' reserved water rights described by this Compact and a holder of a water right recognized under state law. Resolution of the controversy shall be governed by the terms of this Compact where applicable or, to the extent not applicable, by appropriate state or federal law.

2. For purposes of the administration of federal reserved water rights provided for in Article II, the United States agrees that a water commissioner, or other official appointed by a court of competent jurisdiction, may enter the U.S. Sheep Experiment Station to collect data, inspect structures for the diversion and measurement of water, and distribute the federal reserved water rights in Article II. The terms of entry or distribution may be limited, as appropriate, by an order of a court of competent jurisdiction. Nothing herein waives the right of the United States, with respect to a specific action or anticipated action by a water commissioner or other official under this subsection, to seek terms of entry or distribution consistent with purposes of the U.S. Sheep Experiment Station, including but not limited to terms of entry that respect the integrity of ongoing or proposed research, or to seek terms of entry or distribution consistent with federal law if in conflict with state law.

3. The Department may enter the U.S. Sheep Experiment Station lands upon which a federal reserved water right is described in Article II for the purposes of data collection on U.S. Sheep Experiment Station water diversions or water uses. The Department shall notify the United States by certified mail or in person at least 72 hours prior to entry.

C. **Use of Reserved Water Rights.**

The reserved rights of the United States described in this agreement are federal water rights. Nonuse of all or a part of the federal water rights described in this Compact shall not constitute abandonment or forfeiture of those rights. The federal water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the U.S. Sheep Experiment Station.

D. **Change in Use.**

1. The United States may make a change in the use of its reserved water rights described in Article II, sections B.1. and 2., provided that:

(a) the use must fulfill the purposes of the U.S. Sheep Experiment Station described in Article II, section A;

(b) the total use shall not exceed the amount described in this Compact; and

(c) the change shall not adversely affect a senior water right recognized under state law.

2. The United States' federal reserved water right to divert or withdraw water for emergency fire suppression as described in Article II, section B.3., shall not be changed to any other use.

E. **Reporting Requirements.**

The United States shall provide a report to the Department on an annual basis, or on a periodic basis agreed to by the Parties, containing specific information on:

1. the development of new uses as described in Article II, section B.2.;
2. changes in use as described in Article III, section D; and
3. the source of supply, the dates of use, and the estimated amount of water used for emergency fire suppression as described in Article II, section B.3.

ARTICLE IV
GENERAL PROVISIONS

A. **No Effect on Tribal Rights or Other Federal Reserved Water Rights.**

1. The relationship between the water rights of the United States described herein and any rights to water of an Indian Tribe, or of any federally derived water right of an individual, or of the United States on behalf of such tribe or individual shall be determined by the rule of priority.

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the U.S. Sheep Experiment Station.

3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any Indian Tribes and tribal members.

4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian Tribe regarding boundaries or property interests.

B. **General Disclaimers.**

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State or of the United States and any other state;

2. as a waiver by the United States on behalf of the Agricultural Research Service of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact or any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use;

4. to establish a precedent for other agreements between the State and the United States or an Indian tribe;

5. to determine the relative rights, inter sese, of Persons using water under the authority of state law or to limit the rights of the Parties or a Person to litigate an issue not resolved by this Compact;

6. to create or deny substantive rights through headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of this Compact;

8. to limit the authority of the United States to manage its lands in accordance with the Constitution, statutes, and regulations of the United States;

9. to affect in any manner the entitlement to or quantification of other federal water rights;

10. to be binding on the United States with regard to the water rights of the United States for any area other than the U.S. Sheep Experiment Station;

11. to affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact;

12. to prevent the United States from seeking a permit to appropriate water under state law for use within or outside the U.S. Sheep Experiment Station boundaries.

C. **Reservation of Rights.**

The Parties expressly reserve all rights not granted, described, or relinquished in this Compact.

D. **Severability.**

The provisions of this Compact are not severable.

E. **Multiple Originals.**

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

F. **Notice.**

Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as the Director may designate in writing.

2. United States: Upon the Secretary of Agriculture, the U.S. Sheep Experiment Station Director, and such other officials as the Secretary may designate in writing.

ARTICLE V
FINALITY OF COMPACT

A. **Binding Effect.**

1. The Effective Date of this Compact is the date of the ratification of this Compact by the Montana legislature, written approval by the United States Department of Agriculture, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on the Parties.

2. Following the Effective Date of this Compact, this Compact shall not be modified without the consent of both Parties. Either party may seek enforcement of this Compact in a court of competent jurisdiction.

3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all Persons bound by the final order of the court.

4. If an objection to this Compact is sustained pursuant to 85-2-702(3) and 85-2-703, MCA, this Compact shall be voidable by action of and without prejudice to either party.

B. **Filing Compact with State Court.**

Subject to the following stipulations and within one hundred eighty (180) days of the Effective Date of this Compact, the Parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. 666 for approval in accordance with state law and for the incorporation of the water rights described in this Compact into a decree or decrees entered therein. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

C. **Dismissal of Filed Claims.**

At the time the state courts approve the water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all water right claims specified in Appendix 4 of this Compact for the U.S. Sheep Experiment Station. If this Compact is not approved or a water right described herein is not confirmed, these claims shall not be dismissed.

D. **Settlement of Claims.**

The Parties intend that the water rights described in this Compact are in full and final settlement of the federal reserved water right claims for the U.S. Sheep Experiment Station land in Montana described in this Compact and administered by the Agricultural Research Service on the Effective Date of this Compact. On the Effective Date of this Compact, the United States hereby and in full settlement of any and all claims to federal reserved water rights by the United States, including all claims that the Agricultural Research Service filed or could have filed as part of the ongoing statewide adjudication process, relinquishes forever all claims to federal reserved water rights within the State for the U.S. Sheep Experiment Station. The State agrees to recognize the water rights described and quantified herein and shall, except as expressly provided for herein, treat them in the same manner as a water right under Montana state law. Nothing in this Compact precludes the Agricultural Research Service from filing for future water use permits under Montana state law.

E. **Defense of Compact.**

The Parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF, the representatives of the State of Montana and the United States have signed this Compact on the _____ day of ____________, 2007.

History: En. Sec. 1, Ch. 80, L. 2007.

Part 13

United States of America, Fish and Wildlife Service, Bowdoin National Wildlife Refuge-Montana Compact

85-20-1301. United States of America, fish and wildlife service, Bowdoin national wildlife refuge-Montana compact ratified. The compact entered into by the State of Montana and the United States of America to settle for all time any and all claims to federal reserved water rights for the Bowdoin National Wildlife Refuge administered by the U.S. Fish and Wildlife Service within the State of Montana and filed with the secretary of state of the State of Montana under the provisions of 85-2-703 on April 6, 2007, is ratified. The compact is as follows:

ARTICLE I - RECITALS

WHEREAS, in 1979, the United States brought several actions in the United States District Court for the District of Montana to adjudicate, inter alia, its rights to water with respect to the Bowdoin National Wildlife Refuge; see United States v. Aageson, No. CV-79-GF (filed April 5, 1979);

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America; see "the McCarran Amendment", 43 U.S.C. 666(a)(1) (1952);

WHEREAS, the State of Montana in 1979 pursuant to Title 85, chapter 2, of the Montana Code Annotated (MCA), commenced a general adjudication of the rights to use water within the State of Montana, including all federal reserved and appropriative water rights;

WHEREAS, the Montana Reserved Water Rights Compact Commission, pursuant to 85-2-703, MCA, is authorized to negotiate settlement of water rights claims filed by the United States for areas in which the United States claims reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of Bowdoin National Wildlife Refuge in the State of Montana;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-517 and 519 (1968);

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. 1457 (1986, Supp. 1992), inter alia;

WHEREAS, it is in the best interest of all Parties that the water rights claims for the Bowdoin National Wildlife Refuge be settled through agreement between the State of Montana and the United States;

NOW, THEREFORE, the Parties agree to enter into this Compact for the purpose of settling the water rights claims of the United States for the Bowdoin National Wildlife Refuge.

ARTICLE II - DEFINITIONS

For purposes of this compact only, the following definitions shall apply:

(1) "Abstract" means the copy of the document entitled "Abstract of U.S. Fish and Wildlife Service Water Rights" referenced in this Compact as Appendix 1.

(2) "Acre-Foot" or "Acre-Feet" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet of water.

(3) "Acre-Foot per Year" or "Acre-Feet per Year" or "AFY" means an annual quantity of water measured in Acre-Feet over a period of a year.

(4) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(5) "Arising Under State Law" means, as applied to a water right, a water right created under Montana law and does not include water rights created under federal law.

(6) "Beaver Creek Basin" means Montana Water Court Basin 40M, consisting of the mainstem of Beaver Creek and its tributaries, including Big Warm Creek, Little Warm Creek, and Black Coulee, to its confluence with the Milk River.

(7) "Bowdoin National Wildlife Refuge" or "Refuge" means those lands and interests in lands located in Montana that were acquired pursuant to or withdrawn and reserved by Executive Order No. 7295 of February 14, 1936, and Executive Order No. 8592 of November 12, 1940, for purposes of providing a refuge and breeding ground for migratory bird and other wildlife.

(8) "Change in Use" means, as applied to the Refuge water right, a change in the point of diversion, the place of use, the purpose of use, or the place of storage.

(9) "Consumptive Use" means a use of water that removes water from the source of supply such that the quality or quantity is reduced or the timing of return delayed, making it unusable or unavailable for use by others, and includes evaporative loss from impoundments and natural lakes.

(10) "Deep Ground Water" means water extracted from any deep regional Aquifer that is located in any geologic formation dating from the Jurassic Period or older.

(11) "Department" means the Montana Department of Natural Resources and Conservation or any successor agency.

(12) "Effective Date" means the date on which the Compact is given ratification by the Montana Legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice or on which the Memorandum of Understanding concerning the exercise of certain of the water rights quantified in this Compact and attached hereto as Appendix 3 is executed by the State of Montana and the United States Fish and Wildlife Service, whichever date is latest.

(13) "FWS" means the United States Fish and Wildlife Service of the United States Department of the Interior or any successor agency.

(14) "Ground Water" means any water that is beneath the surface of the ground.

(15) "Jurassic Period" means the middle period of the Mesozoic era, spanning the time between approximately 213 million and 145 million years before the Effective Date of this Compact, as identified on the geologic table attached hereto as Appendix 4.

(16) "Milk River Basin" means the mainstem of the Milk River and its tributaries from its headwaters to the confluence with the Missouri River and consists of: Montana Water Court Basins 40F, 40G, 40H, 40I, 40JW, 40JE, 40K, 40L, 40M, 40N, and 40O, as those Basin names may be modified by the Montana Water Court from time to time, and the portion of the Milk River and its tributaries flowing through the Provinces of Alberta and Saskatchewan in Canada.

(17) "Party" or "Parties" means the State of Montana, the United States of America, or both.

(18) "Person" or "Persons" means an individual or individuals or any other entity, public or private, including the State, a tribe, and the United States and all officers, agents, and departments thereof.

(19) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof, and unless otherwise indicated, for purposes of notification or consent, "State" means the Director of the Department or the Director's designee.

(20) "United States" means the federal government and all officers, agencies, and departments thereof, and unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of the Interior or the Secretary's designee.

ARTICLE III - REFUGE WATER RIGHT

The Parties agree that the following water rights are in settlement of the reserved water rights of the United States for the Refuge. All water rights described in this Article are subject to Article IV of this Compact as well as any specific additional conditions set forth below.

A. Quantification.

The United States shall have the right to water from the following sources:

1. Natural Flow.

Subject to the provisions of Article III.B.2, the United States has the right to the surface flow in Basin 40M that drains naturally into the Refuge after satisfaction of the following water rights Arising Under State Law:

(a) all water rights Arising Under State Law with a priority date before the Effective Date of this Compact;

(b) any right excepted from the permitting requirements of State law to appropriate stock water for impoundments or pits with a priority date after the Effective Date of this Compact; and

(c) any right excepted from the permitting requirements of State law to appropriate Ground Water for domestic and/or lawn and garden use with a priority date after the Effective Date of this Compact.

2. Diversion from Beaver Creek - Consumptive Use.

Subject to the provisions of Article III.B.2, the United States has the right to divert up to 24,714 Acre-Feet per Year from Beaver Creek.

3. Ground Water - Consumptive Use.

Subject to the provisions of Article III.B.2:

(a) the United States has the right to develop 223 Acre-Feet of Ground Water extracted from well(s) located within the exterior boundaries of the Refuge; and

(b) subject also to the provisions of Article III.H, the United States has the right to develop 5,300 Acre-Feet of Deep Ground Water extracted from well(s) located any place within the Refuge.

B. Relative Priority.

1. Priority Date.

Subject to the provisions of Article III.H., the United States has a priority date of November 12, 1940, for the water rights described in this Compact for the Refuge.

2. Subordination.

The water rights described in Article III.A are subordinated to:

(a) all rights Arising Under State Law with a priority date before the Effective Date of this Compact;

(b) any right excepted from the permitting requirements of State law to appropriate stock water for impoundments or pits with a priority date after the Effective Date of this Compact; and

(c) any right excepted from the permitting requirements of State law to appropriate Ground Water for domestic and/or lawn and garden use with a priority date after the Effective Date of this Compact.

C. Period of Use.

The period of use of the water right set forth in Article III.A is January 1 through December 31 of each year.

D. Points and Means of Diversion.

1. Diversion of the water right set forth in Article III.A.2 may be located on Beaver Creek off the Refuge, subject to applicable State and federal law and/or any place within the Refuge.

2. Diversion of the water right set forth in Article III.A.1 and 3 may be located any place within the Refuge.

E. Place of Use.

The water rights set forth in Article III.A may be used anywhere within the Refuge.

F. Purposes.

The water rights set forth in Article III.A may be used for the purposes of the Refuge, including wildlife habitat maintenance and enhancement (including grazing needs for habitat management purposes), stock watering, and administrative uses, including but not limited to domestic, lawn and garden, institutional, and dust abatement uses.

G. Temporary Emergency Appropriations.

The use of water for emergency fire suppression benefits the public and is necessary for the purposes of the Refuge. The United States may divert water for emergency fire suppression at the Refuge without definition of the specific elements of a recordable water right. Temporary emergency use of water for emergency fire suppression from a source for which a water right is quantified in Article III shall not be considered an exercise of that right.

H. Deep Ground Water Use.

The development and use of the water right set forth in Article III.A.3(b) is subject to:

1. The provisions of Article III.I.1.b. and Article IV.B of the Fort Belknap-Montana Compact, 85-20-1001 through 85-20-1008, MCA; and

2. All applicable State laws pertaining to Ground Water wells, including but not limited to authorization under 85-2-311, MCA, and all state and federal water quality standards, with the exception that the priority date for this use shall be the Effective Date of this Compact and the water developed pursuant to this right may be used only for the purposes set forth in Article III.F of this Compact.

I. Exercise of Right Subject to Agreement.

In addition to the foregoing, the exercise of the water rights quantified in this Compact are subject to the provisions set forth in that Memorandum of Understanding (MOU) executed between the FWS and the State and attached hereto as Appendix 3. The MOU may at any time be modified by the mutual consent of the Parties, and such modification shall not be considered a modification of this Compact. Prior to execution of the MOU or of any changes to it, the Parties shall: (1) provide notice to water users in the affected basins of the proposed terms of the MOU and any proposed changes to it; (2) hold at least one meeting in Malta, Montana, and one meeting in Glasgow, Montana, preceded by such notice as may be required under State law for public meetings, at which representatives of the State and the United States will explain the proposed MOU or any change(s) to it and allow for public comment; and (3) provide a reasonable period for receipt of any written public comment concerning the MOU or the proposed change(s).

ARTICLE IV - IMPLEMENTATION OF COMPACT

A. Enforcement of Water Right.

1. The United States, the State, or a holder of a water right Arising Under State Law may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' water right described by this Compact and a holder of a water right Arising Under State Law. Resolution of the controversy shall be governed by the terms of this Compact where applicable, or to the extent not applicable, by applicable state or federal law.

2. The United States agrees that a water commissioner appointed by a state or federal court of competent jurisdiction, or other official authorized by law, may enter the Refuge for the purpose of data collection, including the collection of information necessary for water distribution on or off the Refuge, and to inspect structures for the diversion and measurement of water described in this Compact for Consumptive Use. The terms of entry shall be as specified in an order of a state or federal court of competent jurisdiction.

3. The Department may enter the Refuge at a reasonable hour of the day for the purposes of data collection on water diversion and stream flow or inspection of devices maintained by the United States pursuant to this Compact. The Department shall notify the United States by certified mail, telephone, e-mail, or in person, at least 24 hours prior to entry.

4. The United States may request an investigation by the Department of a diversion located on a stream for which a water right is described in this Compact. The Department may investigate. If an investigation occurs, the United States may accompany the Department.

5. The United States shall maintain structures, including wellhead equipment and casing, for the diversion and measurement of water authorized for consumptive use by this Compact and shall measure all exercises of its consumptive use water right. The United States shall maintain any devices it deems necessary for enforcement of its water right for natural flow described in this Compact.

B. Use of Water Right.

The rights of the United States described in this Compact are federal reserved water rights. Non-use of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment of the right. The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under State law, but shall be restricted to uses necessary to fulfill the purposes of the Refuge.

C. Change in Use.

1. Natural flow.

Water rights specified in this Compact for natural flow shall not be subject to Change in Use, provided that: the emergency use of water for fire suppression as provided for in Article III.G. shall not be deemed a Change in Use or violation of a water right for natural flow.

2. Consumptive uses.

The United States may make a Change in Use of its Consumptive Use water rights described in Article III.A. of this Compact provided that:

(a) the Change in Use shall be in fulfillment of the purposes of the Refuge;

(b) the total Consumptive Use shall not exceed the amount described in this Compact;

(c) the Change in Use shall not adversely affect any water right Arising Under State Law; and

(d) with the exception of the provisions governing a change in the purpose for which the water right is used, the United States, in making the change, shall comply with the provisions of the Montana Water Use Act, Title 85, chapter 2, MCA, applicable to change in appropriation right at the time of the change.

3. Reporting by the United States.

For any action affecting the use of a consumptive right, whether or not such action is deemed a Change in Use, the United States agrees to provide the following information to the Department upon request:

(a) Well Log:

A well log for any use that includes the drilling of a well or enlargement of an existing wellbore, such well log(s) also to be supplied to the Montana Bureau of Mines and Geology.

(b) Emergency Use:

(i) The use to which water was put, the dates of use, and the estimated amount of water used, for any temporary emergency use for fire suppression authorized by Article III.G of this Compact;

(ii) Such information needs to be provided to the Department, in response to its request, only after the commencement and subsequent cessation of any such emergency use.

(c) Periodic Report:

Within 60 days after receiving a request from the Department, the United States agrees to provide the Department with a report on:

(i) actions since the Effective Date of the Compact or any prior periodic report, whichever is later, affecting the use of a Consumptive Use right described in this Compact;

(ii) the initiation of new uses of any water right recognized in this Compact that were completed since the Effective Date of the Compact or any prior periodic report, whichever is later; and

(iii) any data and documents generated or received by the FWS since the Effective Date of the Compact or any prior periodic report, whichever is later, on measurement of stream flow on a stream with a natural flow water right set forth in this Compact.

4. Reporting by the State.

Upon request and no more often than once in each calendar year, the Department shall provide the United States with a report of:

(a) changes in appropriation granted, as defined by State law, since the Effective Date of the Compact or any prior report, whichever is later, of water rights upstream of the Refuge on Beaver Creek;

(b) any data and documents generated by the Department since the Effective Date of the Compact or any prior report, whichever is later, on the measurement of stream flows, diversions, and well use on or tributary to a stream for which a water right for natural flow is described in this Compact;

(c) any certificate of water right issued since the Effective Date of the Compact or any prior report, whichever is later, for the right to appropriate Ground Water in Basin 40M; and

(d) any permit issued since the Effective Date of the Compact or any prior report, whichever is later, for the right to appropriate stock water for impoundment or pit in Basin 40M.

ARTICLE V - GENERAL PROVISIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights.

1. The relationship between the water rights of the United States described in this Compact and any rights to water of any Indian tribe, or any federally derived water right of an individual, or of the United States on behalf of such tribe or individual, shall be determined by the rule of priority. The Parties agree that the water rights described in this Compact are junior to any rights to water of any Indian tribe, or any federally derived water right of an individual, or of the United States on behalf of such tribe or individual, currently quantified or as may be quantified after the Effective Date of this Compact and with a priority date before the Effective Date of this Compact, including aboriginal rights, if any, in the basins affected.

2. Nothing in the Compact may be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the FWS at the Refuge.

3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the water rights of any Indian tribe or tribal member.

4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian tribe regarding its boundaries or property interests in the State of Montana.

B. State Water Rights.

Nothing in this Compact may limit the exclusive authority of the State, including the authority of a water commissioner authorized by State law, to administer all current and future water rights Arising Under State Law within and upstream of the Refuge, provided that in administration of those water rights in which the United States has an interest, such authority is limited to that granted under federal law.

C. Abstract.

Concurrent with this Compact, the Parties have prepared an Abstract, a copy of which is referenced as Appendix 1, which is a specific listing of all of the United States' water rights for the Refuge that are described in this Compact and quantified in accordance with this Compact. The Parties prepared the Abstract to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstract are subject to the terms of this Compact. In the event of a discrepancy between a right listed in the Abstract and that same right as quantified in accordance with Articles III and IV of this Compact, the Parties intend that the quantification in accordance with Articles III and IV of this Compact shall be reflected in a final decree.

D. General Disclaimers.

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State or the United States and any other state;

2. as a waiver by the United States of its right under State law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, MCA, in the basins affected by this Compact or any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the state Water Use Act, Title 85, MCA, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;

4. to determine the relative rights inter sese of Persons using water under the authority of state or tribal law or to limit the rights of the Parties or any other Person to litigate any issues or questions not resolved by this Compact;

5. to authorize the taking of a water right that is vested under state or federal law;

6. to create or deny substantive rights through headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of this Compact;

8. to affect or determine the applicability of any state or federal law, including, without limitation, environmental and public safety laws, on activities of the FWS;

9. to affect the right of the State to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or Act of Congress;

10. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with regard to the water rights of the United States for the Refuge and does not affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact.

11. to prevent the United States from constructing or modifying an outlet to an impoundment at the Refuge in compliance with all applicable laws;

12. to prevent the United States from seeking a permit to appropriate water under State law;

13. to modify or prevent modification of the March 9, 1937, Memorandum of Agreement between the Secretary of the Interior and the Secretary of Agriculture in the Matter of a Water Supply for the Lake Bowdoin Migratory Water Fowl Refuge;

14. to prevent the United States from entering into an agreement pursuant to applicable law(s) to obtain additional water from the Milk River or Beaver Creek Basins by contract, lease, or purchase or from participating in efforts to improve water supply in the Milk River Basin.

E. Reservation of Rights.

The Parties expressly reserve all rights not granted, described, or relinquished in this Compact.

F. Severability.

The provisions of this Compact are not severable.

G. Multiple Originals.

This compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

H. Notice.

Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as the Director may designate in writing; and

2. United States: Upon the Secretary of the Interior and such other officials as the Secretary may designate in writing.

ARTICLE VI - FINALITY

A. Binding Effect.

1. After the Effective Date of this Compact, all of the provisions of this Compact shall be binding on:

(a) the State, and any Person, using, claiming, or in any manner asserting a right under the authority of the State to the use of water; and

(b) except as otherwise provided in Article V.A., the United States, and any Person, using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.

2. Following the Effective Date, this Compact shall not be modified without the mutual consent of the Parties. Either Party may seek enforcement of this Compact in a court of competent jurisdiction. Attempt to unilaterally modify this Compact by either Party shall render this Compact voidable at the election of the other Party.

3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all Persons bound by the final order of the court.

4. If an objection to this Compact is sustained pursuant to 85-2-702, MCA, this Compact shall be voidable by action of and without prejudice to either Party.

5. Notwithstanding any other provision in this Compact, the State reserves the right to withdraw as a Party if, within five (5) years of ratification of this Compact by the Montana legislature:

(a) this Compact is not given written approval by the United States Department of the Interior;

(b) this Compact is not given written approval by the United States Department of Justice; or

(c) the Memorandum of Understanding concerning the exercise of certain of the water rights quantified in this Compact and attached hereto as Appendix 3 is not executed by the State and the FWS.

6. Notwithstanding any other provision in this Compact, the United States reserves the right to withdraw as a Party if, within five (5) years of ratification of this Compact by the Montana legislature, the Memorandum of Understanding concerning the exercise of certain of the water rights quantified in this Compact and attached hereto as Appendix 3 is not executed by the State and the FWS.

7. Notwithstanding any other provision in this Compact, the State reserves the right to withdraw as a Party if, at any point subsequent to the Effective Date of this Compact, the United States unilaterally withdraws from the Memorandum of Understanding attached hereto as Appendix 3.

B. Disposition of Actions.

Subject to the following stipulations and within one hundred eighty (180) days of the Effective Date, the Parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. 666, for approval in accordance with State law and for the incorporation of the reserved water rights described in this Compact into a decree or decrees entered therein. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702, MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

1. Dismissal of Filed Claims.

At the time the state courts approve the reserved water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all of the water right claims specified in Appendix 2 to this Compact. If this Compact fails approval or a reserved water right described herein is not confirmed, the specified claims shall not be dismissed.

2. Disposition of Federal Suits.

Within ninety (90) days of the issuance of a final decree or decrees by the state courts approving this Compact and confirming the reserved water rights described herein and the completion of any direct appeals therefrom or the expiration of the time for filing such appeal, the Parties shall execute and file joint motions pursuant to Rule 41(a), Fed. R. Civ. P., to dismiss with prejudice any claims made by the United States for the FWS for the Refuge described in this Compact in federal court. This Compact may be filed as a consent decree in those federal suits only if, prior to the dismissal of the federal suits as provided in this Article, it is finally determined in a judgment binding on the State that the state courts lack jurisdiction over some or all of the reserved water rights described in this Compact. Within one (1) year of such judgment, the United States agrees to commence such additional proceedings in the federal district court for the District of Montana as may be necessary to judicially confirm the reserved water rights described herein which are not included within an existing action.

3. Continuation of Negotiations.

The Parties were unable to finalize agreement on quantification of the water rights for the National Bison Range and the Charles M. Russell and UL Bend National Wildlife Refuges and UL Bend Wilderness Area, prior to the Effective Date of this Compact. The Parties agree to continue to pursue, in good faith, quantification of water rights for these areas. In the event the Parties are unable to agree on quantification, the United States retains its right to have the quantity of any reserved water right for these areas adjudicated in a state or federal court of competent jurisdiction.

C. Settlement of Claims.

The Parties intend that the water rights described in this Compact are in full and final settlement of the water right claims for the reserved land described in this Compact and administered by the FWS in Montana on the Effective Date of this Compact. Pursuant to this settlement, the United States hereby and in full settlement of any and all claims filed by the United States or which could have been filed by the United States for the Refuge relinquishes forever on the Effective Date of this Compact all said claims to water within the State for the Refuge. The State agrees to recognize the reserved water rights described and quantified herein and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the State.

D. Defense of Compact.

The Parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

History: En. Sec. 1, Ch. 161, L. 2007.

Part 14
United States of America, Department of Agriculture, Forest Service-Montana Compact

85-20-1401. United States of America, department of agriculture, forest service-Montana compact ratified. The compact entered into by the state of Montana and the United States of America, Department of Agriculture, Forest Service and filed with the secretary of state of the state of Montana under the provisions of 85-2-702 on April 17, 2007, is ratified. The compact is as follows:

WATER RIGHTS COMPACT
STATE OF MONTANA
UNITED STATES OF AMERICA,
DEPARTMENT OF AGRICULTURE, FOREST SERVICE

This Compact is entered into by the State of Montana ("State") and the United States of America ("United States") to settle for all time any and all claims existing on the Effective Date of This Compact to federal reserved water rights for National Forest System Lands administered by the Forest Service, an agency of the United States Department of Agriculture ("Forest Service"), within the State of Montana.

RECITALS

WHEREAS, the State of Montana, in 1979, pursuant to Title 85, chapter 2, of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana, including all federal reserved and appropriative water rights;

WHEREAS, section 85-2-703, MCA, provides that the State may negotiate compacts concerning the equitable division and apportionment of water between the State and its people and the federal government with claims to non-Indian federal reserved water rights within the State of Montana;

WHEREAS, section 85-2-228, MCA, provides that a federal reserved water right with a priority date of July 1, 1973, or later be subject to the same process and adjudication as a federal reserved water right with a priority date before July 1, 1973;

WHEREAS, the United States wishes to secure water rights to fulfill the purposes of National Forest System Lands in the State of Montana;

WHEREAS, the United States, in quantifying and securing water rights to meet National Forest System purposes, seeks cooperatively to accommodate the interests of the State and its citizens and to avoid the conflict and uncertainty inherent in litigating federal reserved water rights claims. The United States believes that the natural flows needed for favorable conditions of flow, for fisheries, and for other resource management goals and obligations on National Forest System Lands can be achieved, without materially affecting the interests of the United States, through the use of state law as provided in this Compact.

WHEREAS, the United States Attorney General or a duly designated official of the United States Department of Justice has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516 and 517;

WHEREAS, The Secretary of Agriculture or a duly designated official of the United States Department of Agriculture has authority to execute this Compact on behalf of the United States Department of Agriculture pursuant to 7 U.S.C. 2201 note, Section 1(a);

NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE I
DEFINITIONS

For purposes of this Compact only the following definitions shall apply:

(1) "Abstracts" means the documents included in Appendix 1 of this Compact, entitled "Abstracts of Forest Service Federal Reserved Water Rights for Current Discrete Administrative Uses", referenced in this Compact as Appendix 1.

(2) "Concurrently" for the purposes of instream uses means not cumulative to the flow of other instream, nondiversionary water rights on the same reach of stream and for the purposes

of in situ uses means not cumulative to the volume or flow of other in situ, nondiversionary water rights from the same source of water.

(3) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

(4) "Discrete Administrative Use" means a federal reserved water right to divert or withdraw water from a source of supply for use authorized under the Organic Administrative Act, 16 U.S.C. 473, et seq., necessary to fulfill the primary purposes of a National Forest at administrative sites on National Forest System Lands and includes but is not limited to federal reserved water rights for the following purposes: water for district offices, ranger stations, guard stations, work centers, and housing; water used for facilities operated for administrative purposes; water used for permanently established tree nurseries and seed orchards; and water for maintaining riding and pack stock used for administrative purposes.

(5) "Dispersed Administrative Use" means a federal reserved water right to divert or withdraw water from time to time, as needed, from a source of supply for use authorized under the Organic Administrative Act, 16 U.S.C. 473, et seq., necessary to fulfill the primary purposes of a National Forest within a specified area on National Forest System Lands and includes but is not limited to federal reserved water rights for the following purposes: water for dust abatement and road construction; water for prescribed fire management; water for reclamation; water used to establish vegetation; water used temporarily for establishment of nursery stock and seed orchards; and water for other incidental administrative purposes.

(6) "Effective Date of This Compact" means the date of the ratification of the Compact by the Montana Legislature, written approval by the United States Department of Agriculture, or written approval by the United States Department of Justice, whichever is later.

(7) "In situ" means water with a surface expression used in the place of its natural occurrence and without need of a diversion structure, measured as a flow, level, or volume of water.

(8) "National Forest System Lands" means all lands within Montana that are owned by the United States and administered by the Secretary of Agriculture through the Forest Service, but does not include any lands within the exterior boundaries of National Forest System units that are not owned by the United States and administered by the Secretary of Agriculture through the Forest Service.

(9) "Parties" means the State and the United States.

(10) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

(11) "South Fork Flathead Wild and Scenic River" means the segment of the South Fork of the Flathead River from its origin to Hungry Horse Reservoir located in Montana that, pursuant to the Wild and Scenic Rivers Act, 16 U.S.C. 1271, et seq., was designated as a component of the National Wild and Scenic Rivers System by Public Law 94-486, 16 U.S.C. 1274(a)(13), on October 12, 1976.

(12) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "State" means the Director of the Montana Department of Natural Resources and Conservation or the Director's designee.

(13) "United States" means the United States of America and all officers, agencies, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of Agriculture or the Secretary's designee.

(14) "Water Right Recognized Under State Law" means a water right or use created and administered under Montana law and includes all Forest Service water rights created in Article V of this Compact and state water reservations granted, but does not include a federal or tribal reserved water right recognized by the State.

(15) "Wetted Perimeter Methodology" means an instream flow methodology for fisheries flow based on habitat for food production in the shallow, fast-moving water of a stream. The wetted perimeter is the distance across the bottom and sides of a stream channel, measured at a riffle area, that is in contact with the water. A graph of the wetted perimeter versus discharge generally yields two inflection points. The upper inflection point of the graph is the level above

which large increases in discharge result in a small increase of the wetted perimeter. The lower inflection point of the graph is the level below which small decreases in discharge result in large decreases of the wetted perimeter.

ARTICLE II
FEDERAL RESERVED WATER RIGHTS

The Parties agree that the following water rights are the federal reserved water rights of the United States for the National Forest System Lands.

A. **Discrete Administrative Uses on National Forest System Lands.**

The United States has federal reserved water rights for current and future Discrete Administrative Uses on National Forest System Lands, subject to the terms of Article III of this Compact:

1. **Current Discrete Administrative Uses on National Forest System Lands.**

The United States has federal reserved water rights for current Discrete Administrative Uses on National Forest System Lands as set forth in Table 1 and the specific listing and Abstracts attached to this Compact as Appendix 1. In the event there is a discrepancy between Table 1 and an Abstract contained in Appendix 1, the Abstract in Appendix 1 controls.

2. **Future Discrete Administrative Uses on National Forest System Lands.**

The United States has federal reserved water rights for future Discrete Administrative Uses on National Forest System Lands as set forth in Table 1.

B. **Dispersed Administrative Uses on National Forest System Lands.**

The United States has federal reserved water rights for Dispersed Administrative Uses on National Forest System Lands, subject to the terms of Article III of this Compact, as set forth in Table 1. The period of use for Dispersed Administrative Uses on National Forest System Lands can be for any period throughout the year.

TABLE 1

				Discrete Administrative Uses		Dispersed Administrative Uses
MT Adj Basin	Priority Date	National Forests	Current (AF/YR)	Future (AF/YR)	Total (AF/YR)	Volume (AF/YR)
39E	1906-09-24	Custer	0.00	2.00	2.00	12.20
39F	1906-09-24	Custer	0.25	2.00	2.25	11.90
39FJ	1906-11-05	Custer	0.00	2.00	2.00	5.50
40A	1902-08-16	Lewis & Clark	1.36	2.00	3.36	90.00
	1906-08-10	Gallatin				3.30
40B	1906-11-05	Lewis & Clark	0.00	2.00	2.00	5.50
40C	1906-11-05	Lewis & Clark	0.00	2.00	2.00	2.70
41A	1906-11-05	Beaverhead-Deerlodge	2.13	2.13	4.26	121.00
41B	1906-11-05	Beaverhead-Deerlodge	1.26	2.00	3.26	42.90
41C	1906-11-05	Beaverhead-Deerlodge	8.90	8.90	17.80	70.90
41D	1906-11-05	Beaverhead-Deerlodge	202.27	49.27	251.54	310.60
41E	1906-04-12	Beaverhead-Deerlodge	0.00	2.00	2.00	85.50
	1905-05-12	Helena				1.20
41F	1902-08-16	Beaverhead-Deerlodge	14.62	14.62	29.24	98.50
	1902-08-16	Gallatin				69.50
41G	1906-04-12	Beaverhead-Deerlodge	2.50	2.50	5.00	81.80
41H	1906-03-07	Gallatin	14.63	14.63	29.26	147.60
41I	1905-10-03	Gallatin	4.75	4.75	9.50	15.40
	1905-10-03	Helena				169.30

41J	1905-10-03	Helena				36.00
			5.51	5.51	11.02	
	1906-11-06	Lewis & Clark				102.30
41K	1897-02-22	Lewis & Clark	6.63	6.63	13.26	44.80
41M	1897-02-22	Lewis & Clark	3.01	3.01	6.02	43.50
41O	1897-02-22	Lewis & Clark	3.75	3.75	7.50	24.40
41Q	1902-08-16	Lewis & Clark	0.33	2.00	2.33	72.10
41QJ	1906-11-06	Lewis & Clark				0.80
			0.00	2.00	2.00	
	1928-05-17	Helena				17.10
41R	1903-12-12	Lewis & Clark	0.00	2.00	2.00	9.50
41S	1902-08-16	Lewis & Clark	2.50	2.50	5.00	96.80
41U	1897-02-22	Lewis & Clark				11.20
			0.01	2.00	2.01	
	1928-05-17	Helena				14.40
42B	1907-03-02	Custer	0.00	2.00	2.00	13.10
42C	1907-03-02	Custer	39.35	39.35	78.70	133.70
42J	1907-03-02	Custer	0.00	2.00	2.00	11.20
43A	1906-08-10	Gallatin	1.51	2.00	3.51	43.40
43B	1902-09-04	Gallatin	14.33	14.33	28.66	136.10
43BJ	1902-09-04	Gallatin	9.64	9.64	19.28	22.50
43BV	1902-09-04	Gallatin	0.00	2.00	2.00	8.20
43C	1902-09-04	Custer	3.00	3.00	6.00	34.50
43D	1902-09-04	Gallatin				3.40
			2.25	2.25	4.50	
	1902-09-04	Custer				25.50
43N	1906-11-06	Custer	0.00	2.00	2.00	14.40
43P	1906-11-06	Custer	0.10	2.00	2.10	9.90
76B	1906-08-13	Kootenai	0.02	2.00	2.02	129.10
76C	1907-03-02	Kootenai	1.00	2.00	3.00	110.00
76D	1907-03-02	Kootenai	9.60	9.60	19.20	384.30
76E	1905-10-03	Beaverhead-Deerlodge				76.90
			4.00	4.00	8.00	
	1905-10-03	Lolo				52.10
76F	1928-05-17	Helena				65.90
			19.40	19.40	38.80	
	1906-11-06	Lolo				123.70
76G	1906-04-12	Beaverhead-Deerlodge				112.30
			85.75	9.75	95.50	
	1906-04-12	Helena				35.00
	1905-10-03	Lolo				17.00
76GJ	1905-10-03	Beaverhead-Deerlodge	0.00	2.00	2.00	51.90
76H	1897-02-22	Bitterroot				280.20
			96.82	75.00	171.82	
	1897-02-22	Lolo				59.00
76I	1897-02-22	Flathead	0.02	2.00	2.02	22.30
76J	1897-02-22	Flathead	4,247.75	2.16	4,249.91	120.00
76K	1897-02-22	Flathead	241.51	241.51	483.02	97.10
76L	1907-03-02	Flathead				3.40
			0.00	2.00	2.00	
	1907-03-02	Lolo				8.50
76LJ	1907-03-02	Flathead				246.40
			5.78	5.78	11.56	
	1897-02-22	Kootenai				12.20
76M	1906-11-06	Lolo	1,000.28	335.28	1335.56	337.90
76N	1907-03-02	Kootenai				138.80
			4.26	4.26	8.52	
	1907-03-02	Lolo				168.40

C. **Emergency Fire Suppression.**

The use of water for emergency fire suppression benefits the public and is necessary for the primary purposes of the National Forest System Lands in Montana. The United States has a federal reserved water right to divert or withdraw water on National Forest System Lands, with the priority date for each Water Court basin set forth in Table 1 of this Compact, from a stream, lake, or pond, as needed for emergency fire suppression for the benefit of National Forest System Lands, and without a definition of the specific elements of a recordable water right, subject to the terms of Article III. Use of water for emergency fire suppression shall not be considered an exercise of the United States' federal reserved water rights for Discrete Administrative Uses as described in Article II, section A., or Dispersed Administrative Uses as described in Article II, section B.

D. **South Fork Flathead Wild and Scenic River.**

The United States has a federal reserved water right with a priority date of October 12, 1976, for instream flow on the South Fork Flathead Wild and Scenic River in the amount of the entire flow of the river, less any of the United States' Discrete Administrative Uses as described in Article II, section A., and Dispersed Administrative Uses as described in Article II, section B., provided that the instream flow water right is subordinate to all Water Rights Recognized Under State Law with a priority date before the Effective Date of This Compact. This federal reserved water right ends at the point where the South Fork Flathead Wild and Scenic River flows into Hungry Horse Reservoir.

ARTICLE III
IMPLEMENTATION OF FEDERAL RESERVED WATER RIGHTS

A. **Abstracts.**

Abstracts for all the United States' federal reserved water rights for Current Discrete Administrative Use on National Forest System Lands are set forth in Appendix 1. The Parties prepared the Abstracts to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights for current Discrete Administrative Uses as described in this Compact. The rights specified in the Abstracts are subject to the terms of this Compact.

B. **Enforcement and Administration of Federal Reserved Water Rights.**

1. When a controversy arises between the United States' federal reserved water rights described by this Compact and another holder of a Water Right Recognized Under State Law or, for enforcement pursuant to Article VIII, section B., when there is a question concerning the use of water on National Forest System Lands under this Compact, the United States, the State, or a holder of a Water Right Recognized Under State Law may petition a court of competent jurisdiction for relief. Resolution of any controversy must be governed by the terms of this Compact when applicable or, to the extent not applicable, by appropriate federal or state law.

2. For the purpose of the administration of federal reserved water rights provided for in Article II, the United States agrees that a water commissioner or other official appointed by a court of competent jurisdiction may enter National Forest System Lands to collect data, inspect structures for the diversion and measurement of water, and distribute the federal reserved water rights in Article II. The terms of entry or distribution may be limited, as appropriate, by an order of a court of competent jurisdiction. Nothing in this Compact waives the right of the United States, with respect to a specific action or anticipated action by a water commissioner or other official under this subsection, to seek terms of entry or distribution consistent with federal law if in conflict with state law.

3. The Department may enter National Forest System Lands for which a federal reserved water right is described in Article II for the purposes of data collection on Forest Service water diversions or notice requirements by the United States, pursuant to Article III, section C.3., of this Compact.

C. **Use of Federal Reserved Water Rights.**

1. **Federal Reserved Water Rights.**

The rights of the United States described in Article II of this Compact are federal reserved water rights. Non-use of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment of the right.

2. **Development of Future Discrete Administrative Uses.**

The United States, without prior approval of the Department, may develop a Discrete Administrative Use after the Effective Date of This Compact as described in Article II, section A.2., provided that:

(a) the purpose of use of the water is for a Discrete Administrative Use as defined in Article I(4) and described in Article II, section A.2.;

(b) the quantity of water for Discrete Administrative Uses diverted or withdrawn shall not exceed the total amount as set forth in Article II, Table 1; and

(c) the use shall not adversely affect a senior Water Right Recognized Under State Law.

3. **Use of Dispersed Administrative Uses.**

The United States, without prior approval of the Department, may use its federal reserved water right for Dispersed Administrative Uses, as needed, provided that:

(a) the purpose of use of the water is for a Dispersed Administrative Use as defined in Article I(5) and described in Article II, section B.;

(b) the total quantity of water for Dispersed Administrative Uses diverted or withdrawn shall not exceed the amount as set forth in Article II, Table 1;

(c) the Forest Service shall provide notice of a Dispersed Administrative Use as follows:

(i) for uses of 20,000 gallons or less per day from a single source of supply, no notice is required;

(ii) for uses greater than 20,000 gallons per day and less than 60,000 gallons per day from a single source of supply, a notice must be posted at the site of the diversion or withdrawal for the entire period during which water is being diverted or withdrawn. The notice posted shall be clearly legible and visible and provide the following information:

(A) source of water;

(B) purpose of use;

(C) starting and ending date of diversion;

(D) place of use;

(E) diversion flow rate;

(F) maximum volume of water to be diverted or withdrawn per day; and

(G) name and contact information for the contractor, the local Forest Service Ranger District, and the local Department Water Resources Regional Office.

(iii) for uses greater than 60,000 gallons per day from a single source of supply, the local Department Water Resources Regional Office must be notified at least 10 days but not more than 45 days in advance of the initial use of the water. Notice must be posted at the site of the diversion or withdrawal, as provided in Article III, section C.3.(c)(ii). Notification to the Department Water Resources Regional Office must provide the following information:

(A) source of water;

(B) legal description of the point of diversion or withdrawal;

(C) place of use;

(D) map showing preceding three items;

(E) purpose of use;

(F) starting and ending date of use;

(G) diversion flow rate;

(H) maximum volume of water to be diverted or withdrawn per day; and

(I) name and contact information for the contractor and the local Forest Service Ranger District.

(d) the diversion or withdrawal of water for a Dispersed Administrative Use shall not adversely affect a senior Water Right Recognized Under State Law; and

(e) if notified that the diversion or withdrawal for a Dispersed Administrative Use is adversely affecting a senior Water Right Recognized Under State Law, the Forest Service will immediately cease diversion or withdrawal from that source of supply. To resume the diversion or withdrawal, the Forest Service can move the diversion or withdrawal to another source of supply or satisfy the senior user and the Department Water Resources Regional Office Manager that use will not adversely affect the senior user or users.

D. **Change in Use of Federal Reserved Water Rights.**

1. **Discrete Administrative Uses.**

The United States, without approval of the Department, may change a Discrete Administrative Use described in Article II, section A., provided that:

(a) the purpose of use of the water remains a Discrete Administrative Use as defined in Article I(4) and described in Article II, section A.;

(b) the quantity of water for Discrete Administrative Uses diverted or withdrawn shall not exceed the total amount as set forth in Article II, Table 1; and

(c) the change shall not adversely affect a Water Right Recognized Under State Law.

2. **Dispersed Administrative Uses.**

The United States' federal reserved water right to divert or withdraw water for Dispersed Administrative Uses as described in Article II, section B., shall not be changed to any other use.

3. **Emergency Fire Suppression.**

The United States' federal reserved water right to divert or withdraw water for Emergency Fire Suppression as described in Article II, section C., shall not be changed to any other use.

4. **South Fork Flathead Wild and Scenic River.**

The United States' federal reserved water right for instream flow for the South Fork Flathead Wild and Scenic River, as described in Article II, section D., shall not be changed to any other use.

E. **Reporting Requirements.**

1. The Forest Service agrees to provide a report to the Department on an annual basis or on a periodic basis agreed to by the Parties containing information on development of Discrete Administrative Uses, as described in Article III, section C.2., and any change of a Discrete Administrative Use, as described in Article III, section D.1.

2. Upon request by the Department, the Forest Service shall report to the Department information it has regarding water use for Emergency Fire Suppression, as described in Article II, section C.

3. For Dispersed Administrative Uses, as described in Article III, section C.3.(c)(ii) and (iii), upon request by the Department, the Forest Service shall provide copies of notice postings for the stream or basin requested.

4. For Dispersed Administrative Uses, as described in Article III, section C.3.(c)(i), upon request by the Department, the Forest Service shall report information it has available. In the event the Department requests additional information for future reports on a stream or basin for enforcement or water distribution purposes, the Forest Service agrees to comply with the request.

F. **Ownership Interest in Water for Purposes of Statewide Adjudication.**

The federal reserved water rights for Administrative Uses and Emergency Fire Suppression described in Article II, sections A., B., and C., are ownership interests in water and its use for each water source within National Forest System Lands that has been affected by a temporary preliminary decree or preliminary decree.

ARTICLE IV
STATE LAW PROVISIONS

A. **Compact Principles.**

In order to promote settlement of issues between the United States and the State, the United States agrees to relinquish any and all claims to federal reserved water rights for instream flows on National Forest System Lands. The State agrees that, in consideration for the United States' agreement not to pursue federal reserved water rights for instream flows on National Forest System Lands, the following principles, subject to the terms of this Compact, shall be included in state law:

1. **Forest Service Water Rights Recognized Under Law Created in This Compact.**

There shall be created by this Compact Water Rights Recognized Under State Law held by the Forest Service as set forth in Article V, Table 2.

2. **State Water Reservation Process.**

(a) There shall be a state water reservation process providing a means for the United States to appropriate state-law-based water rights for a minimum instream flow, level, or quality of water that provides an opportunity for hearing and judicial review.

(i) Any appropriation granted under this process will result in a water right held by the United States that is protectable and enforceable under state law, and shall not be subject to periodic review or reallocation.

(ii) The date of appropriation for water rights granted under the state water reservation process will be the date of filing of the application for state water reservations and will be senior in priority to any applications for state water reservations filed after that date.

(b) The Parties agree that the language of 85-2-316, MCA, on the Effective Date of This Compact and the terms of Article VI of this Compact satisfy the principles in Article IV, section A.2.

3. **New State Water Reservation Section.**

The United States shall have the right to apply for a state water reservation under a new specific procedure in limited circumstances for state water reservations as set forth in Article VI, section B.

4. **Standing.**

In the ongoing statewide adjudication, the United States shall have the right to object to and participate as an objector to any water right claim for water use or storage on or water conveyed across National Forest System Lands. The Parties agree that the language of 85-2-233, MCA, on the Effective Date of This Compact satisfies the principles in Article IV, section A.4.

B. **State Law Adopted as a Condition Precedent to This Compact.**

Subject to Article VIII, section D., the Parties agree that as a condition precedent to this Compact, the following provisions will be adopted as state law:

1. **Sequencing.**

(a) The permitting process for water appropriations under state law and the permitting for the access and use of National Forest System Lands in relation to water appropriations will be sequenced to avoid conflict between state and federal permitting.

(b) The applicant is required to show proof of federal authorization before the application for a new appropriation of water or a change of appropriation will be correct and complete when:

(i) a state permit is required prior to a new appropriation of water, including ground water, or a change of appropriation; and

(ii) a federal authorization is required to occupy, use, or traverse National Forest System Lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water for the appropriation or change of appropriation.

(c) The state permit for a new appropriation shall be subject to any terms, conditions and limitations related to the use of water contained in the required federal authorization.

(d) The Parties agree that the language of 85-2-302, 85-2-310, 85-2-311, 85-2-312, and 85-2-402, MCA, on the Effective Date of This Compact satisfies this condition precedent.

2. **Change of Diversionary Use to Instream Flow.**

In addition to any other process available under state law, the Forest Service may apply for a change of use from an appropriation right to divert or withdraw water on land owned by the United States that is located within or immediately adjacent to the exterior boundaries of National Forest System Lands on the Effective Date of This Compact to an instream flow water right on National Forest System Lands within or immediately adjacent to the exterior boundaries of National Forest System Lands on the Effective Date of This Compact in accordance with procedures required under state law. The Parties agree that the language of 85-2-320 on the Effective Date of This Compact satisfies the principles in Article IV, section B.2.

ARTICLE V
WATER RIGHTS RECOGNIZED UNDER STATE LAW

There is created by this Compact appropriations of Water Rights Recognized Under State Law held by the Forest Service for instream flow or in situ use as set forth in Article V.

A. Water Rights Recognized Under State Law

TABLE 2

			Lower Stream Point				Upper Stream Point			
Water Right Number	Source	Flow Rate (CFS)	SEC	TWP	RGE	QTR SEC	SEC	TWP	RGE	QTR SEC
41F-30023850	Horse Creek	3.0	25	10S	01W	NESE	29	10S	01W	SWNW
41F-30023851	Sheep Creek	4.0	1	12S	02E	SWSE	20	12S	03E	SWNW
41H-30023852	East Fork Hyalite Creek	7.0	23	04S	06E	SWNW	12	05S	06E	SWSW
41H-30023853	Hyalite Creek	28.0	14	03S	05E	SESW	15	04S	06E	NWSW
41H-30023854	West Fork Hyalite Creek	12.0	26	04S	06E	NWNW	23	05S	06E	NW
41I-30023855	Beaver Creek	10.0	19	12N	02W	SWNE	11	12N	02W	SENE
41J-30023856	Sheep Creek	27.0	2	12N	05E	NWSW	5	12N	06E	SESE
41J-30023857	Tenderfoot Creek	15.0	30	14N	05E	NENE	22	14N	05E	NWSW
41S-30023858	Dry Wolf Creek	5.0	28	15N	10E	SWNW	31	15N	10E	SWSW
41S-30023859	South Fork Judith River	3.5	1	12N	11E	NENE	4	11N	11E	SENE
43B-30023860	Little Mission Creek	2.5	14	03S	11E	NENW	27	03S	11E	NWNE
43B-30023861	Pine Creek	4.0	8	04S	10E	NWSW	16	04S	10E	NWSW
43B-30023862	South Fork Deep Creek	7.0	5	04S	10E	NENW	14	04S	10E	NWNW
43B-30023863	Upper Deer Creek	2.0	13	02S	14E	NENW	29	03S	14E	SESE
76B-30023864	North Fork Yaak River	24.0	15	37N	31W	SWNE	4	37N	31W	NE
76B-30023865	Pete Creek	15.0	5	35N	32W	NENW	29	36N	32W	SWNW
76B-30023866	Seventeenmile Creek	40.0	27	34N	33W	NWSE	5	33N	32W	NWNW
76B-30023867	South Fork Yaak River	19.0	2	35N	32W	NENE	5	34N	31W	SWSW
76B-30023868	Spread Creek	50.0	3	35N	33W	SWSE	29	36N	33W	SENE
76B-30023869	West Fork Yaak River	30.0	32	37N	31W	NWNE	35	37N	32W	NENE
76C-30023870	East Fisher	15.0	31	26N	29W	NWNE	31	26N	29W	NENE
76C-30023871	Silver Butte/Fisher River	34.0	17	26N	29W	NENE	35	26N	30W	SENW
76C-30023872	West Fisher River	28.0	1	26N	30W	NWNW	4	26N	30W	SWSE
76D-30023873	Barron Creek	2.0	27	32N	29W	SWNW	21	32N	30W	NW
76D-30023874	Big Cherry Creek	40.0	27	29N	31W	SWSW	3	28N	31W	NENE
76D-30023875	Big Creek	19.0	3	34N	29W	NWNW	34	35N	30W	NWNW
76D-30023876	Bobtail Creek	5.0	20	31N	31W	NWSW	8	31N	31W	NESW
76D-30023877	Bristow Creek	12.0	14	32N	29W	NWNW	8	32N	29W	NESE
76D-30023878	Callahan Creek	60.0	24	31N	34W	NWNW	21	31N	34W	NWSE
76D-30023879	Canyon Creek	4.0	22	31N	29W	SWSE	29	31N	28W	SWSW
76D-30023880	Cripple Horse Creek	8.0	2	31N	29W	NESE	5	31N	28W	SWSW
76D-30023881	Five Mile Creek	4.0	17	32N	28W	SWNW	19	32N	27W	NENE
76D-30023882	Granite Creek	21.0	2	29N	31W	NWNW	5	29N	31W	NESE
76D-30023883	Libby Creek	40.0	16	28N	30W	NWNW	18	28N	30W	SESE
76D-30023884	Midas Creek	1.5	31	28N	30W	SWNW	8	27N	30W	SWSE
76D-30023885	North Fork Big Creek	14.0	28	35N	30W	SWSE	31	36N	30W	SWSE
76D-30023886	Parmenter Creek	10.0	7	30N	31W	SWNE	18	30N	32W	SWSW
76D-30023887	Quartz Creek	17.5	12	31N	32W	SESW	2	31N	32W	SWNE
76D-30023888	Ross Creek	20.0	8	28N	33W	NENE	17	28N	34W	SWNW
76D-30023889	South Fork Big Creek	20.0	33	35N	30W	SENE	5	32N	30W	NENE
76D-30023890	Therriault Creek	4.0	3	35N	26W	SWNW	3	35N	26W	SENW
76D-30023891	Young Creek	6.0	17	37N	28W	NESE	8	37N	29W	SE
76E-30023892	Middle Fork Rock Creek	41.0	18	04N	15W	NENE	25	04N	16W	NWSW
76E-30023893	Rock Creek at Bitterroot Flat	150.0	7	08N	17W	NWNW	7	07N	16W	SESE
76E-30023894	Rock Creek at Mouth	250.0	13	11N	17W	SENE	30	11N	16W	SWNW
76E-30023895	West Fork Rock Creek	12.0	35	06N	16W	NESE	2	05N	17W	NWSW
76F-30023896	Clearwater River at Lake Alva	13.0	24	18N	16W	SWSE	24	18N	16W	NWSE
76F-30023897	Copper Creek	11.0	26	15N	08W	SENE	9	15N	08W	NENE
76F-30023898	Morrell Creek	12.0	35	17N	15W	SWSE	1	17N	15W	NESE
76F-30023899	North Fork Blackfoot River	39.0	2	15N	11W	NWNW	27	16N	11W	NESE
76F-30023900	Placid Creek	7.0	13	16N	16W	SWSW	10	16N	16W	NWNW
76F-30023901	Poorman Creek	7.0	8	13N	08W	NWSW	24	13N	08W	SENE
76G-30023902	Little Blackfoot River	17.0	30	09N	06W	NENW	12	08N	07W	SWNE
76G-30023903	Schwartz Creek	10.0	4	11N	17W	NWNW	8	11N	17W	SESW
76H-30023904	Lolo Creek	41.0	29	12N	22W	NENE	25	12N	23W	NENW
76H-30023905	South Fork Lolo Creek	15.0	6	11N	21W	NWNW	7	11N	21W	NWNW
76J-30023906	Wounded Buck Creek	11.0	17	29N	18W	SWNW	30	29N	18W	SWSW
76K-30023907	Bond Creek	6.0	24	25N	18W	NWNW	17	25N	17W	NWSE
76K-30023908	Cedar Creek	7.0	12	22N	18W	NENW	21	22N	18W	SESE
76K-30023909	Cold Creek	22.0	28	21N	17W	SWNE	33	21N	18W	NENW
76K-30023910	Elk Creek	25.0	16	20N	17W	NENE	23	20N	18W	SENW
76K-30023911	Goat Creek	11.0	17	23N	17W	NWSW	12	23N	17W	NWNE
76K-30023912	Groom Creek	2.5	12	25N	18W	SWSW	5	25N	17W	SE
76K-30023913	Hall Creek	2.5	11	25N	18W	SENE	11	25N	18W	NENE
76K-30023914	Lion Creek	19.0	8	22N	17W	SWNE	10	22N	16W	NWSW
76K-30023916	North Fork Lost Creek	6.0	27	25N	17W	NWSE	5	24N	16W	NESE
76K-30023917	Piper Creek	9.0	8	22N	17W	SWSW	33	22N	18W	NENW
76K-30023918	Scout Creek	1.5	12	23N	17W	NWNE	19	23N	16W	SESE

76K-30023919	South Fork Lost Creek	6.0	6	24N	16W	SWSW	19	24N	16W	NWSE
76LJ-30023920	Red Meadow Creek	16.0	7	35N	21W	SWNW	11	35N	22W	NWNW
76LJ-30023921	Trail Creek	37.0	34	37N	22W	SESE	28	37N	22W	SESW
76M-30023922	Rattlesnake Creek	17.0	2	13N	19W	NWNE	14	14N	18W	NENW
76M-30023923	Trout Creek	28.0	23	16N	26W	SWSW	5	15N	26W	NESW
76N-30023924	Bull River	29.0	14	28N	33W	NWNW	14	28N	33W	NENW
76N-30023925	Graves Creek	28.0	36	23N	30W	SWSW	36	23N	30W	NWNE
76N-30023926	Trout Creek	14.0	24	24N	32W	NENE	28	24N	32W	SWSW
76N-30023927	Vermilion River	110.0	14	24N	31W	SWSE	7	24N	30W	NWSW

Water Right	Volume	QTR				
Number	Source	(AF/YR)	SEC	TWP	RGE	SEC
76M-30023928	Shoofly Meadow	50.75	4	14N	17W	SW

B. **Priority Date.**

The priority date of each of the Forest Service Water Rights Recognized Under State Law created in Article V, section A., is the Effective Date of This Compact.

C. **Purpose of Use.**

Except for Water Right Number 76M-30023928, the purpose of use of each of the Forest Service Water Rights Recognized Under State Law created in Article V, section A., is fishery. The purpose of use for Water Right Number 76M-30023928, created in Article V, section A., is wildlife, which includes habitat.

D. **Period of Use.**

The period of use of each of the Forest Service Water Rights Recognized Under State Law created in Article V, section A., is January 1 to December 31.

E. **Limitation on Objections to Changes.**

A Forest Service Water Right Recognized Under State Law created in Article V, section A., shall not be the basis to preclude a change in point of diversion, means of diversion, or place of use of a senior, direct-from-source, stock water right within an allotment on National Forest System Lands if the change is for dispersing stock in the allotment and the proposed change does not expand historic consumptive use of the stock water right.

F. **Administration and Enforcement.**

The Forest Service Water Rights Recognized Under State Law created in Article V, section A., are appropriations under state law and, as such, will be administered by the State and enforced in accordance with state law. The United States, as owner and user of these water rights, is entitled to the same benefits and is subject to the same regulations as all other holders of a Water Right Recognized Under State Law.

G. **Concurrent With Other Instream Flow Uses.**

The Forest Service Water Rights Recognized Under State Law created in Article V, section A., are for instream uses or in situ nonconsumptive use, meaning that there is no diversion, impoundment, or withdrawal associated with the use and the use does not cause a net loss of water in the source of supply. The Forest Service Water Rights Recognized Under State Law created in Article V, section A., shall run Concurrently with other instream flow or in situ rights.

ARTICLE VI

APPLICATIONS FOR STATE WATER RESERVATIONS UNDER STATE LAW

A. **State Water Reservation.**

The Forest Service may apply for a state water reservation to maintain a minimum flow, volume, level, or quality of water on National Forest System Lands under 85-2-316, MCA, in all basins within the State including basins or subbasins closed to new appropriations on or after the Effective Date of This Compact, subject to the terms of this Compact, for any purpose authorized by federal law applicable to National Forest System Lands. Any purpose authorized by federal law applicable to National Forest System Lands shall be considered a beneficial use under state law for the purposes of this Compact but shall set no precedent as to whether such purposes are beneficial uses under state law outside the terms of this Compact. A state water reservation issued under 85-2-316, MCA, is a Water Right Recognized Under State Law.

B. **Specific Procedure in Limited Circumstances.**

1. (a) For a state water reservation application pursuant to Article VI, section A., when the purpose of the reservation is to maintain a minimum flow for fish and the amount requested is based on the Wetted Perimeter Methodology or other methodology adopted pursuant to Article VI, section B.1.(b), a correct and complete application shall constitute:

(i) conclusive evidence of the purpose of the reservation;
(ii) conclusive evidence of the need for the reservation;
(iii) prima facie evidence that the amount requested is accurate and suitable:
(A) at the lower inflection point of the Wetted Perimeter Methodology; or
(B) at the upper inflection point of the Wetted Perimeter Methodology or other methodology adopted pursuant to Article VI, section B.1.(b), when the purpose of the reservation is for an existing population of bull trout, westslope cutthroat trout, Yellowstone cutthroat trout, Columbia River redband trout, arctic grayling, or any other fish species listed in the future under the Endangered Species Act of 1973, 16 U.S.C. 1531, et seq.; and
(iv) prima facie evidence that the reservation is in the public interest.

(b) By mutual agreement of the Parties, the Department may propose an administrative rule under the Montana Administrative Procedure Act, Title 2, chapter 4, of the Montana Code Annotated, to establish a methodology, other than the Wetted Perimeter Methodology, for an application for a state water reservation to maintain a minimum flow under Article VI, section B.1.(a), for fish species identified in Article VI, section B.1.(a)(iii)(B). Rulemaking under this subsection shall not be considered a modification of this Compact. The Department may adopt a rule under this subsection only if it finds, based on scientific and technical evidence in the administrative record, that:

(i) the proposed methodology enjoys acceptance in the scientific community as a methodology for establishment of minimum flow for pertinent fish species based on evidence that includes the existence of peer-reviewed studies, testimony or publications by experts in the field, and previous use in Montana or another relevant location; and

(ii) the results of the proposed methodology with respect to the stream that is the subject of the application are either based on field data collected with respect to the stream or susceptible to verification based on field data.

2. For purposes of Article VI, section B., a correct and complete application shall be substantially in the form attached to this Compact as Appendix 3. Appendix 3 may be modified at any time by the consent of both Parties and shall not be considered a modification of the Compact.

3. For the purposes of Article VI, section B., the Department shall issue a state water reservation unless an objector proves by a preponderance of the evidence that:

(a) the amount of water under the Wetted Perimeter Methodology or other methodology adopted pursuant to Article VI, section B.1.(b), was not accurately measured or calculated, that the Wetted Perimeter Methodology or other methodology adopted pursuant to Article VI, section B.1.(b), could not suitably be applied to the stream reach applied for, or that there is not an existing population of the fish species set forth in Article VI, section B.1.(a)(iii)(B), identified in the application for state water reservation in the stream reach applied for; or

(b) for the public interest, there is a projected water development project:
(i) that is feasible;
(ii) that is reliably projected to be commenced within ten (10) years or within ten (10) years after a basin closure is removed;
(iii) in which the objector has or can reasonably obtain a possessory interest or the written consent of the Person or Party with the possessory interest in the property where the water is to be diverted, impounded, stored, transported, and put to beneficial use;
(iv) for which the amount of water needed for the project is reasonable;
(v) for which water needed for the project is not reasonably available from any other water source;
(vi) for which the water needed for the project, based on amount and period of use, would be unavailable if the proposed reservation was granted;
(vii) that would not be feasible with water either in a lesser amount or at a different location if the reservation was granted; and
(viii) that serves a significant public need.

4. If the Department determines that proofs under Article VI, section B.3.(a), are met or that proofs for all criteria under Article VI, section B.3.(b), are met, the Department may issue, modify, or deny the reservation or may subordinate the reservation to the actual development of the project identified in Article VI, section B.3.(b).

C. **General Provisions.**

1. The Forest Service's ability to apply for a state water reservation pursuant to Article VI in any basin or subbasin terminates thirty (30) years after the state court issues a final decree for that water basin under 85-2-234(1), MCA, or thirty (30) years after the Effective Date of This Compact, whichever is later. The termination of the Forest Service's ability to apply for a state water reservation pursuant to Article VI under this subsection shall not restrict the Forest Service's ability to apply for a water right in any process available to the Forest Service under state law, including 85-2-316, MCA, provided that, the terms of this Compact shall not apply.

2. A state water reservation issued to the Forest Service under Article VI shall not be the basis to preclude a change in point of diversion, means of diversion, or place of use of a senior, direct-from-source, stock water right within an allotment on National Forest System Lands if the change is for dispersing stock in the allotment and the proposed change does not expand historic consumptive use of the stock water right.

3. In any contested case proceeding held under the Montana Administrative Procedure Act, Title 2, chapter 4, of the Montana Code Annotated, pursuant to this Compact, the common law and statutory rules of evidence shall apply only upon stipulation of all entities who are involved in a proceeding.

4. Any appeal of an administrative decision under Article VI shall be in state court and shall be filed at the First Judicial District in Helena, and the review shall be conducted according to the procedures for judicial review of contested cases under the Montana Administrative Procedure Act, Title 2, chapter 4, of the Montana Code Annotated.

5. A state water reservation issued to the Forest Service pursuant to Article VI is not subject to periodic review by the Department as set forth in 85-2-316(10), MCA. A state water reservation issued to the Forest Service pursuant to Article VI shall not be reallocated to another qualified reservant with a retained priority date as set forth in 85-2-316(11), MCA. Unless provided in this Compact, all other provisions of state law apply to a state water reservation issued to the Forest Service.

D. **Administration and Enforcement.**

Any state water reservation issued pursuant to Article VI is a Water Right Recognized Under State Law and, as such, will be administered by the State and enforced in accordance with state law. The United States, as owner and user of these water rights, is entitled to the same benefits and is subject to the same regulations of water use as all other holders of a Water Right Recognized Under State Law.

E. **Concurrent With Other Instream Flow Uses.**

Any state water reservation issued pursuant to Article VI is a Water Right Recognized Under State Law for instream uses or in situ nonconsumptive uses, meaning that there is no diversion, impoundment, or withdrawal associated with the use and the use does not cause a net loss of water in the source of supply. Unless otherwise provided in the terms and conditions, a state water reservation issued pursuant to Article VI shall run Concurrently with other instream flow rights.

F. **Department Reporting to Montana Legislature.**

For the period of time set forth in Article VI, section C.1., the Department shall biennially report to the Environmental Quality Council or other appropriate legislative committee the state water reservations applied for by the Forest Service since the previous report and the Department action on applications for state water reservations by the Forest Service since the previous report.

ARTICLE VII
GENERAL PROVISIONS

A. **No Effect on Tribal Rights or Other Federal Reserved Water Rights.**

1. The relationship between the water rights of the Forest Service described in this Compact and any rights to water of an Indian tribe in Montana or of any federally derived water right of an individual or of the United States on behalf of such tribe or individual shall be determined by the rule of priority. The Parties to this agreement recognize that the water rights described in This Compact are junior to any tribal water rights with a priority date before the Effective Date of This Compact, including aboriginal rights, if any, in the basins affected.

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than National Forest System Lands.

3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any Indian tribes and tribal members in Montana.

4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian tribe regarding boundaries or property interests in the State of Montana.

B. **General Disclaimers.**

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of federal reserved water rights or the interpretation or administration of future compacts between the United States and the State or between the United States and any other state;

2. as a waiver by the United States of its right under state law to raise objections in state court to individual water rights claimed pursuant to state law on National Forest System Land in the basins affected by this Compact or any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under state law in the basins affected by this Compact;

3. to establish a precedent for other agreements between the State and the United States or an Indian tribe;

4. to determine the relative rights, inter sese, of Persons using water under the authority of state law or to limit the rights of the Parties or a Person to litigate an issue not resolved by this Compact;

5. to create or deny substantive rights through headings or captions used in this Compact;

6. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of This Compact;

7. with respect to federal reserved water rights, to affect the right of the State to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs pursuant to a ruling by a court of competent jurisdiction or Act of Congress;

8. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with regard to the water rights of the Forest Service and does not affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact;

9. to prevent the United States from seeking a permit to appropriate water under state law from a source not closed to new permits by law; or

10. to expand or restrict rights of the United States under federal law except as expressly provided in this Compact.

C. **Reservation of Rights.**

The Parties expressly reserve all rights not granted, described, or relinquished in this Compact.

D. **Severability.**

Except as provided in Article VIII, section C., the provisions of this Compact are not severable.

E. **Multiple Originals.**

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

F. **Notice.**

Unless otherwise specifically provided for in this Compact, service of notice required under this Compact, except service in litigation, shall be:

1. State: Upon the Director of the Department or other officials that the Director may designate in writing.

2. United States: Upon the Secretary of Agriculture or other officials that the Secretary may designate in writing.

ARTICLE VIII
FINALITY OF COMPACT AND DISMISSAL OF CLAIMS

A. **Binding Effect.**

1. The Effective Date of This Compact is the date of the ratification of this Compact by the Montana Legislature, written approval by the United States Department of Agriculture, or written approval by the United States Department of Justice, whichever occurs later. Subject to Article VIII, section C., once effective, all of the provisions of this Compact shall be binding on:

(a) the State and a Person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the State to the use of water; and

(b) except as otherwise provided in Article VII, section A., the United States and a Person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.

2. Following the Effective Date of This Compact, this Compact shall not be modified without the consent of both Parties. Unilateral substantive modification of the terms of this Compact by either Party, as determined by a court of competent jurisdiction, shall render this Compact voidable at the election of the other Party.

3. On approval of this Compact by a court of competent jurisdiction and entry of a decree by such court confirming the rights described in this Compact, this Compact and such rights are binding on all Persons bound by the final order of the court.

4. If an objection to this Compact is sustained under 85-2-233, MCA, this Compact shall be voidable by action of and without prejudice to either Party.

B. **Enforcement of Compact.**

1. Either Party may seek enforcement of the terms of this Compact in a court of competent jurisdiction, subject to the limitations of remedies provided in Article VIII, section C.

2. When the enforcement action involves issues of notice or reporting required under Article III, sections C.3.(c) and E., the State shall provide written notice to the Forest Service and allow a reasonable opportunity to resolve the issue prior to filing an enforcement action.

3. Except as provided in Article VIII, section C., the remedy for an action for enforcement of the terms of this Compact shall not include termination of the Compact in whole or in part.

C. **Exclusive Remedy for Changes in State Law.**

1. For the time period set forth in subsection 11, if the State enacts a law that results in an alleged material impairment of any principle set forth in Article IV, section A.2., A.3., or A.4., the United States may, within 90 days of the effective date of the law, provide notice to the State of the alleged material impairment. If the United States fails to provide notice within 90 days of the effective date of the law, the United States is barred from taking any action under this section regarding alleged material impairment by enactment of the law.

2. Following the receipt of notice provided in subsection 1, the Parties shall meet within 30 days to discuss the alleged material impairment. The Parties may each appoint a negotiator and may utilize a neutral third party to discuss resolution of the alleged material impairment.

3. If the State does not agree that the legislation has resulted in material impairment within 90 days or such time as the Parties may agree or if no other alternative resolution has been found, the United States may seek a judgment in a court of competent jurisdiction declaring that the specified act of the Montana Legislature has resulted in material impairment of a principle set forth in Article IV, section A.2., A.3., or A.4. The only remedy available under this subsection is a declaratory judgment as to whether or not the change in state law results in a material impairment of a principle set for in Article IV, section A.2., A.3., or A.4. The Parties shall jointly request the court to retain jurisdiction through all proceedings under this section.

4. If the State agrees or if a court finds that changes to state law have materially impaired a principle set forth in Article IV, section A.2., A.3., or A.4., the United States may take no action under subsection 5 until the final adjournment of the next regular session of the Montana Legislature. If the material impairment is cured through enacted legislation to the satisfaction of the United States, the United States is barred from taking further action under this section.

5. If, in the opinion of the United States, the State has failed to enact legislation that cures a material impairment as provided in subsection 4, the United States may initiate severance and termination of portions of the Compact as provided in subsection 8 by sending notice to the State within 90 days from the end of the regularly scheduled legislative session. If this notice is

not served within the 90-day period, the United States is barred from severing and terminating portions of the Compact based on material impairment.

6. If the State has enacted a law to cure the material impairment and the United States does not agree that the material impairment has been cured by the enactment, the State shall have the opportunity within 90 days from receipt of the notice served by the United States to seek a judgment declaring that the specific enactment has cured the material impairment of a principle set forth in Article IV, section A.2., A.3., or A.4., either by:

(a) invoking any retained jurisdiction of the court; or

(b) if no court has retained jurisdiction over the dispute, seeking a judgment in a court of competent jurisdiction.

7. If the State does not file an action within the 90-day period provided in subsection 6, the notice served by the United States becomes effective at the expiration of the 90-day period. If the State files for declaratory judgment and the court finds that legislation enacted by the State cures the material impairment, then the notice served by the United States does not operate to sever or terminate portions of the Compact under subsection 8. If the court finds that the enacted legislation does not cure the material impairment, the notice served by the United States becomes effective when the court's judgment becomes final either through the exhaustion of all available appeals or the running of the time for taking an appeal.

8. If the United States elects to sever and terminate portions of the Compact under this section, the Parties agree that Article IV, section A.2., A.3., and A.4., and Article VI together and in their entirety are severed from the Compact and all rights and obligations under those provisions are terminated. All other provisions of this Compact remain in force and effect. If the portions of the Compact are severed and terminated, the Parties agree that the United States shall retain all water rights contained in Articles II and V and state water reservations granted to the United States prior to severance and termination under this subsection.

9. If the United States severs and terminates portions of the Compact as provided in subsection 8, the United States may file federal reserved water right claims in the state general stream adjudication, in the Montana Water Court or other state court that succeeds to the Montana Water Court's jurisdiction to conduct the general stream adjudication, for instream flow for any stream on which the United States has not been granted a Water Right Recognized Under State Law for an instream flow or an in situ right. The United States shall file all federal reserved water right claims for instream flow with the state court within twelve (12) months after severance and termination of portions of the Compact become effective. The United States agrees that, regardless of the dates of the reservation of the National Forest System Lands for which a federal reserved water right is claimed, the priority date of the federal reserved water right claim will be the Effective Date of This Compact.

10. The remedy provided in Article VIII, section C., is the exclusive remedy for actions brought as a result of changes to state law that materially impair the provisions of Article IV, section A.2., A.3., or A.4. There is no remedy under this Compact for changes to state law except as applied under this section to Article IV, section A.2., A.3., and A.4., and as provided in Article VIII, section A.2.

11. This section and the procedure and remedy provided under this section shall remain in effect for a period of thirty (30) years after the state court issues a final decree for all water basins under 85-2-234(1), MCA, that contain National Forest System Lands. This period of time under this subsection is tolled for any period of time during which state law materially impaired the interest of the United States as agreed to by the State or determined by a court of competent jurisdiction. After this period, all rights and remedies under this section terminate.

D. **Limits on Article IV, Section B.**

Article IV, section B., is not an enforceable term of this Compact, and changes to the provisions of state law as described in Article IV, sections B.1. and B.2., after the Effective Date of This Compact shall not give rise to any cause of action in law or in equity or provide any remedy under this Compact.

E. **State Court Filing.**

Subject to the following stipulations and within one hundred eighty (180) days of the Effective Date of This Compact, the Parties shall submit this Compact to an appropriate state court having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. 666, for approval in accordance with state law and for the incorporation of the federal reserved water rights described in this Compact into a decree or decrees entered in the court. The Parties understand and agree that the submission of this Compact to a state court, as provided for in this Compact, does not expand or restrict the jurisdiction of the state court or expand or restrict in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

F. **Dismissal of Filed Claims.**

At the time the state courts approve the federal reserved water rights described in Article II of this Compact and enter a decree or decrees confirming the rights described, such courts shall dismiss, with prejudice, all of the water right claims specified in Appendix 2 of this Compact for National Forest Service Lands. If this Compact fails approval or a federal reserved water right described in this Compact is not confirmed, the specified claims shall not be dismissed.

G. **Consent Decree.**

This Compact may be filed as a consent decree in federal court if it is finally determined in a judgment binding on the State of Montana that the state courts lack jurisdiction over some or all of the water rights described in this Compact. Within one (1) year of such judgment, the United States agrees to commence such proceedings in the federal district court for the District of Montana as may be necessary to judicially confirm the water rights described in this Compact.

H. **Settlement of Claims.**

The Parties intend that the water rights described in this Compact, together with the rights and obligations set forth in Article IV, are in full and final settlement of all federal reserved water right claims filed by the United States or that could have been filed by the United States as of the Effective Date of This Compact for the primary purposes of the National Forest System Lands in the State of Montana. Pursuant to this settlement, the United States hereby relinquishes forever on the Effective Date of This Compact all said federal reserved water right claims.

I. **Defense of Compact.**

The Parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the 17th day of April, 2007.

History: En. Sec. 1, Ch. 213, L. 2007.

Compiler's Comments

Explanatory Note: In Art. II, Table 1, in basins that contain parts of more than one national forest, the discrete administrative uses apply basinwide. The dispersed administrative uses are allocated to each specific forest.

Part 15

Blackfeet Tribe-Montana-United States Compact

85-20-1501. Water rights compact entered into by the Blackfeet Tribe of the Blackfeet Indian Reservation, the State of Montana, and the United States ratified. The compact entered into by the Blackfeet Tribe, the State of Montana and the United States of America to settle for all time any and all claims to federal reserved water rights for the Blackfeet Tribe within the boundaries of the Blackfeet Indian Reservation within the State of Montana and filed with the secretary of state of the State of Montana under the provisions of 85-2-703 on [date of filing] is ratified. The compact is as follows:

ARTICLE I - RECITALS

WHEREAS, pursuant to the Treaty of 1855, 11 Stat. 657, a Reservation was established in Montana for the Blackfeet Tribe; and

WHEREAS, pursuant to said Treaty, the Blackfeet Tribe claims reserved water rights to fulfill the purposes of the Treaty and the Reservation; and

WHEREAS, in 1979, the United States, on its own behalf and on behalf of the Blackfeet Tribe, its members and Allottees brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribe's water rights claims, see United States v. Aageson, No. CIV-79-21-GF (filed April 5, 1979); and

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America in trust for Indian tribes; see "the McCarran Amendment," 43 U.S.C. 666(a)(1) (1952); Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983); and

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes Blackfeet tribal water rights; and

WHEREAS, the United States has filed claims on its own behalf and on behalf of the Blackfeet Tribe, its members and Allottees in the general stream adjudication initiated by the State of Montana, see In the Matter of the Adjudication of the Existing and Reserved Rights to the Use of Water, Both Surface and Underground, of the Blackfeet Tribe of the Blackfeet Reservation within the State of Montana, Civil No. WC-91-1; and

WHEREAS, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negotiate settlement of water rights claims filed by Indian tribes and/or on their behalf by the United States claiming reserved waters within the State of Montana; and

WHEREAS, the federal district court litigation was stayed in 1983 pending the outcome of Montana State court water adjudication proceedings, see Northern Cheyenne v. Adsit, 721 F.2d 1187 (9th Cir., 1983); and

WHEREAS, the adjudication of Blackfeet tribal water rights in the State court proceeding has been stayed while negotiations are proceeding to conclude a compact resolving all water rights claims of the Blackfeet Tribe within the Reservation; and

WHEREAS, the Blackfeet Tribal Business Council, or its duly designated representatives, have authority to negotiate this Compact pursuant to Article VI, Section 1(a) of the Constitution and By-Laws for the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana, as amended; and

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. sections 516-17; and

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. 1457, inter alia; and

WHEREAS, the Blackfeet Tribe of the Blackfeet Indian Reservation, the State of Montana, and the United States agree that the Tribal Water Right described in this Compact is in satisfaction of the water rights claims of the Tribe, its members and Allottees, and of the United States on behalf of the Tribe and its members and Allottees within the Blackfeet Indian Reservation; and

WHEREAS, the Parties agree that it is in the best interest of all Parties that the water rights claims of the Blackfeet Tribe be settled through agreement between and among the Tribe, the State of Montana, and the United States.

NOW THEREFORE, the Parties agree to enter into this Compact for the purpose of settling the federally reserved water rights claims of the Blackfeet Tribe, its members, and Allottees of the Blackfeet Indian Reservation and of the United States on behalf of the Tribe, its members and Allottees within the Blackfeet Indian Reservation.

ARTICLE II- DEFINITIONS

The following definitions shall apply for purposes of this Compact:

(1) "Acre-foot" or "Acre-feet" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet of water.

(2) "Acre-Feet per Year" or "AFY" means an annual quantity of water measured in acre-feet over a period of a calendar year.

(3) "Allottee" or "Allottees" means any individual or individuals who own or hold a trust allotment or interest in a trust allotment on the Reservation under the authority of the General Allotment Act (24 Stat. 388) and the Blackfeet Allotment Acts (34 Stat. 1035 and 41 Stat. 3), and subject to the terms and conditions of those Acts.

(4) "Annual" means during one calendar year.

(5) "Available St. Mary River Water" means:

(a) water from the St. Mary River allocated to the United States under the Boundary Waters Treaty minus that quantity of water required for the Milk River Project Water Right; and/or

(b) water otherwise part of the Milk River Project Water Right but made available to the Tribe by the United States without any net reduction to the legal entitlements to water of water users within entities with contracts for water from the Milk River Project Water Right, as those legal entitlements may be determined initially by the Secretary or subsequently by a court of competent jurisdiction.

(6) "Badger Creek Drainage" means Badger Creek and its tributaries within the Reservation within Basin 41M, as shown in Appendix 2.

(7) "Basin 40F" means the hydrologic Basin 40F, including the Milk River and its tributaries, as shown in Appendix 2.

(8) "Basin 41L" means the hydrologic Basin 41L, including Cut Bank Creek and its tributaries, as shown in Appendix 2.

(9) "Basin 41M" means the hydrologic Basin 41M, including Birch Creek, Badger Creek, Two Medicine River and their respective tributaries, as shown in Appendix 2.

(10) "Basin 40T" means the hydrologic Basin 40T, including the St. Mary River and its tributaries, as shown in Appendix 2.

(11) "Birch Creek" means the mainstem of the southern boundary stream of the Reservation from the southwestern Reservation boundary to the confluence of the Two Medicine River, as shown in Appendix 2.

(12) "Birch Creek Drainage" means Birch Creek and its tributaries within the Reservation within Basin 41M, as shown in Appendix 2.

(13) "Birch Creek Management Plan" means the management plan entered into by the Tribe, the State, the Bureau of Indian Affairs and the Pondera County Canal and Reservoir Company, attached hereto as Appendix 1, and any amendments thereto. Such amendments are pursuant to, and shall not be deemed a modification or amendment of, this Compact.

(14) "Blackfeet Irrigation Project" means the irrigation project authorized by federal law for development on the Reservation in Basins 41L and 41M, and currently administered by the United States Department of the Interior, Bureau of Indian Affairs.

(15) "Blackfeet Water Resources Department" or "BWRD" means the Blackfeet Water Resources Department, or any successor agency.

(16) "Board" means the Blackfeet-Montana Compact Board established by Section J.1 of Article IV of this Compact.

(17) "Boundary Waters Treaty" means the "Treaty Between the United States and Great Britain Relating to Boundary Waters, and Questions Arising Between the United States and Canada," entered into on January 11, 1909, and ratified by the Senate on May 13, 1910 (36 Stat. 2448).

(18) "Call" means the right of the holder of a water right with a senior priority and an immediate need for a recognized use to require a holder of a water right with a junior priority to refrain from diverting water otherwise physically available.

(19) "Cfs" means cubic feet per second.

(20) "Change in Use" means a change in the point of diversion, the place of use, the purpose of use, the period of use or the place or means of storage, including for Lease.

(21) "Compact" means this water rights settlement entered into by the Blackfeet Tribe, the State and the United States.

(22) "Cut Bank Creek Drainage" means Cut Bank Creek and its tributaries within the Reservation within Basin 41L, as shown in Appendix 2.

(23) "Direct Use" means diversion of water from the Natural Flow of a source to be used for a designated purpose without intermediate storage.

(24) "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.

(25) "Effective Date" means the date on which the Compact is finally approved by the Tribe, by the Montana legislature and by the Congress of the United States, whichever date is latest.

(26) "Excepted Rights" means any right excepted from the permitting requirements of State law to appropriate Stock Water for impoundments or pits with a priority date after the Effective Date of this Compact, any right exempt from the permitting requirements of State law to appropriate Ground Water with a priority date after the Effective Date of this Compact, temporary emergency appropriations made after the Effective Date of this Compact and as provided in 85-2-113, MCA, and those small Stock Water and Ground Water rights that are developed free from pre-development review, and those temporary emergency uses to protect lives or property, under tribal law, as each may be applicable.

(27) "Existing Uses" means, as applied to the Tribal Water Right, uses both existing and that historically existed, from both Natural Flow and Ground Water, including irrigation use on all assessable and temporarily non-assessable lands within the Blackfeet Irrigation Project, as of the date the ratification of the Compact by the Montana legislature becomes effective. The following shall be considered Existing Uses and not New Developments:

(a) water made available by the replacement, repair or rehabilitation of storage facilities existing as of the Effective Date of the Compact to their originally designed capacity;

(b) water made available by the rehabilitation, betterment, enlargement, improvement and/or construction of facilities of the Badger-Fisher Irrigation Unit of the Bureau of Indian Affairs' Blackfeet Irrigation Project and other related facilities, specifically:

(i) rehabilitation and betterment of the Four Horns Feeder Canal system up to at least 300 cfs in capacity;

(ii) enlargement of the existing off-stream Four Horns Dam and Reservoir to its maximum practical capacity;

(iii) construction of facilities to deliver a minimum of 15,000 acre-feet of water per year from the enlarged Four Horns Dam to a point on Birch Creek to be designated by the Parties;

(iv) rehabilitation and betterment of the outlet canal delivery system from Four Horns Dam to Blacktail Creek;

(v) rehabilitation and betterment of the Badger-Fisher Main Canal; and

(vi) measures to enhance on-farm efficiency in the Badger-Fisher Irrigation Unit of the Blackfeet Irrigation Project;

(c) water made available by the rehabilitation and betterment of Lower Two Medicine Lake and Mission Lake;

(d) water used by the development of the Two Medicine Water Treatment Plant and Municipal Water Project and associated delivery works, including delivery of water to East Glacier, Browning, Seville and Cut Bank; and

(e) water used by the development of the Babb municipal water supply system.

(28) "Ground Water" means any water that is beneath the ground surface.

(29) "Harm" means an impact on a water right resulting in a material injury.

(30) "Lake Elwell" means the water impounded on the Marias River in Montana by Tiber Dam, a feature of the Lower Marias Unit, Pick-Sloan Missouri Basin Program built pursuant to the Act of December 22, 1944 (58 Stat. 887), as set forth in House Document 475 and Senate Document 191, as revised and coordinated by Senate Document 247, 78th Congress, Second Session.

(31) "Lease" means, as applied to the Tribal Water Right, to authorize a Person or Persons to use all or any part of the Tribal Water Right through a service contract, temporary assignment, or other similar agreement of limited duration.

(32) "Milk River Drainage" means the Milk River and its tributaries within the Reservation within Basin 40F, as shown in Appendix 2.

(33) "Milk River Project" means the Bureau of Reclamation project conditionally approved by the Secretary of the Interior on March 14, 1903, under the Act of June 17, 1902 (32 Stat. 388, chapter 1093), commencing at Lake Sherburne Reservoir and providing water to a point approximately 6 miles east of Nashua, Montana. The St. Mary Storage Unit was authorized on March 25, 1905 by the Secretary of the Interior. Fresno Dam, constructed under the National Industrial Recovery Act, was approved by the President in August 1935, pursuant to the acts of June 25, 1910, and December 5, 1924. The Dodson Pumping Unit was approved by the President on March 17, 1944, under the Water Conservation and Utilization Act of August 11, 1939.

(34) "Milk River Project Water Right" is included herein as a Water Right Arising Under State Law and means those water rights held by the United States Bureau of Reclamation on behalf of the Milk River Project as finally adjudicated by the Montana Water Court.

(35) "Missouri River Basin" means the hydrologic basin of the Missouri River and its tributaries.

(36) "Natural Flow" means the water that would exist in a watercourse absent human intervention.

(37) "New Development" means the development of a use of the Tribal Water Right set forth in this Compact, from any source, commencing after the date the ratification of the Compact by the Montana legislature becomes effective, and encompasses all uses of the Tribal Water Right not defined as Existing Uses.

(38) "Non-irrigation Use" means the use of a water right for purposes other than irrigation.

(39) "Parties" means the Tribe, the State, and the United States.

(40) "Person" means an individual or any other entity, public or private, including the Tribe, the State, and the United States, and all officers, agents and departments of each of the above.

(41) "Recognized Under State Law" means, as applied to a water right, a water right arising under Montana law and does not include water rights arising under federal law.

(42) "Reservation" means the Blackfeet Indian Reservation of Montana as established by the Treaty of October 17, 1855, 11 Stat. 657, and as the Reservation was modified by Executive Order of July 5, 1873, I Kappler 855; the Act of April 15, 1874, 18 Stat. 28; Executive Order of August 19, 1874, I Kappler 856; Executive Order of April 13, 1875, I Kappler 856; Executive Order of July 13, 1880, I Kappler 856; Agreements with the Blackfeet, ratified by the Act of May 1, 1888, 25 Stat. 113; and Agreement with the Blackfeet, ratified by the Act of June 10, 1896, 29 Stat. 321, 353.

(43) "St. Mary River Drainage" means the St. Mary River and its tributaries within the Reservation within Basin 40T, as shown in Appendix 2.

(44) "Secretary" means the Secretary of the United States Department of the Interior, or the Secretary's duly authorized representative.

(45) "State" means the State of Montana and all officers, agencies, departments and political subdivisions thereof.

(46) "Stock Water" means water used for livestock.

(47) "Tribal Water Right" means the right of the Blackfeet Tribe, including any Tribal member or Allottee, to divert, use or store water as described in Article III of this Compact.

(48) "Tribe" means the Blackfeet Tribe of the Blackfeet Indian Reservation and all officers, agencies, and departments thereof.

(49) "Two Medicine River Drainage" means the Two Medicine River and its tributaries within the Reservation within Basin 41M, as shown in Appendix 2.

(50) "Upper Birch Creek Drainage" means that portion of the Birch Creek Drainage within the Reservation from Swift Dam to the confluence of Blacktail Creek, as shown in Appendix 2.

(51) "United States" means the federal government and all officers, agencies and departments thereof.

(52) "Water Rights Arising Under State Law" means those valid water rights Recognized Under State Law existing as of the date the ratification of the Compact by the Montana legislature becomes effective, and not subsequently relinquished or abandoned, as: decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permitted by DNRC; issued, as State water reservations, by the Montana Board of Natural Resources and Conservation or DNRC; exempted from filing in the State adjudication pursuant to 85-2-222, MCA; excepted from the permitting process pursuant to 85-2-306, MCA. The following State water reservations, though Recognized Under State Law, do not constitute Water Rights Arising Under State Law as that term is used in this Compact: Water Reservation Nos. 41L 71688 and 41M 72585 other than the portion authorized for use as PO-171-071-01; and Water Reservation Nos. 41M 30017392, 41M 30017536 other than the portion arising off the Reservation, and 41L 30017445, as shown in Appendix 3.

ARTICLE III - TRIBAL WATER RIGHT

A. Religious or Cultural Uses. The Tribal Water Right described in this Article III includes all traditional religious or cultural uses of water by Blackfeet Tribal members within the Reservation.

B. Right of Use. All Existing Uses by the Tribe, its members and Allottees are included in the Tribal Water Right recognized in this Compact. Such uses include but are not limited to irrigation, Stock Water, domestic, municipal, storage and those uses identified in Article III.A.

C. Basin 41M - Birch Creek Drainage.

1. Quantification.

a. Irrigation right. The Tribe has a Direct Use water right of 100 Cfs of the Natural Flow of Birch Creek for irrigation use in the Upper Birch Creek Drainage. This right may be changed to another place of use or purpose of use only in accordance with Article IV.D.3.

b. In-stream Flow Right.

i. The Tribe also has an in-stream Natural Flow right in Birch Creek of 15 Cfs from October 1 to March 31, and 25 Cfs from April 1 to September 30 of each year. The Tribe may establish, in its discretion and after conferral with appropriate fish and wildlife agencies, a lesser in-stream Natural Flow level of not less than 10 Cfs. Subject to Appendix 1, the Tribe may use all or part of the difference between the in-stream Natural Flow right set forth herein and any lesser in-stream Natural Flow level of not less than 10 Cfs at any place of use and for any purpose of use.

ii. Other than as set forth in Article III.C.1.b.i, the in-stream flow right set forth herein shall not be subject to change to any other use, provided that the emergency use of water pursuant to Article III.H.5 shall not be considered a change or alteration in use, or a violation of a water right for in-stream flow.

c. Additional Flow Right. After satisfaction of all Water Rights Arising Under State Law in Basin 41M, the Tribe may divert or authorize the use of the Natural Flow in Birch Creek as measured at the State Highway 358 bridge crossing Birch Creek and any gaining flows available from the same bridge crossing to Birch Creek's confluence with the Two Medicine River.

d. Ground Water Right. The Tribe also has a right to all Ground Water in the Birch Creek Drainage that is not hydrologically connected to Birch Creek, and to develop or permit the development of Excepted Rights in the Birch Creek Drainage.

2. Priority Date. The priority date of the Tribal Water Right set forth in Article III.C.1 shall be October 17, 1855.

3. Period of Use.

a. Except as provided in Article IV.D.3, the period of use of the water right set forth in Article III.C.1.a shall be April 1 to October 1 of each year.

b. The period of use of the water right set forth in Article III.C.1.b, c and d shall be January 1 to December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions of Article IV of this Compact, and in addition to what is specifically authorized in Article III.C.1.b.i, the Tribe may divert or permit the diversion of the water right set forth in Article III.C.1.a and c from any point on Birch Creek for use within the Reservation and by any means authorized by the Tribal Water Code, or permit the diversion of the water right set forth in Article III.C.1.c from a point off the Reservation pursuant to a Lease under Article IV.D.2.

5. Purposes. The water right set forth in Article III.C.1 may be used for any purpose consistent with the terms of this Compact and allowed by Tribal or federal law.

6. Call Protection. All Water Rights Arising Under State Law using water from sources other than Birch Creek within Basin 41M shall be protected from any Call for the in-stream flows set forth in Article III.C.1.b.

7. Birch Creek Management Plan. The use of the water right set forth in Article III.C.1.a shall also be governed by the terms of the Birch Creek Management Plan, set forth as Appendix 1.

8. Commencement of Development. In addition to the foregoing, the exercise of the water rights set forth in Article III.C.1.a and b is subject to the Agreement Regarding Birch Creek Water Use entered into by the Tribe and the State on January 31, 2008.

D. Basin 41M - Badger Creek Drainage and Two Medicine River Drainage.

1. Quantification.

a. The Tribe has a water right to all Natural Flow and Ground Water within the Badger Creek and Two Medicine Drainages, with the exception of those waters subject to the Water Rights Arising Under State Law in those drainages.

b. Of the Tribal Water Right set forth in Article III.D.1.a, 20 Cfs shall be dedicated to maintain an in-stream flow in the mainstem of Badger Creek within the Badger Creek Drainage, and 20 Cfs shall be dedicated to maintain an in-stream flow in the mainstem of the Two Medicine River within the Two Medicine River Drainage. The in-stream flow right set forth in this Article III.D.1.b shall not be subject to change to any other use, provided that the emergency use of water pursuant to Article III.H.5 shall not be considered a change or alteration in use, or a violation of a water right for in-stream flow.

c. The Tribe is entitled to develop such storage as is necessary to effectuate the right set forth in Article III.D.1.a.

2. Priority Date. The priority date of the Tribal Water Right set forth in Article III.D.1 shall be October 17, 1855.

3. Period of Use. The period of use of the water right set forth in Article III.D.1 shall be January 1 to December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions of Article IV of this Compact, the Tribe may divert or permit the diversion of the water right set forth in Article III.D.1 from any point within the Reservation for use within the Reservation and by any means authorized by the Tribal Water Code, or permit the diversion of the water right set forth in Article III.D.1 from a point off the Reservation pursuant to a Lease under Article IV.D.2.

5. Purposes. The water right set forth in Article III.D.1 may be used for any purpose consistent with the terms of this Compact and allowed by Tribal or federal law.

6. Call Protection. All Water Rights Arising Under State Law within Basin 41M shall be protected from any Call from any user of the Tribal Water Right, with the exceptions of Calls for the in-stream flows set forth in Article III.D.1.b, Calls for stored water, and Calls for water diverted from another hydrologic basin.

E. Basin 41L - Cut Bank Creek Drainage.

1. Quantification.

a. The Tribe has a water right to all Natural Flow and Ground Water within the Cut Bank Creek Drainage, with the exception of those waters subject to the Water Rights Arising Under State Law in that drainage.

b. Of the water right set forth in Article III.E.1.a, 2 Cfs shall be dedicated to maintain an in-stream flow in the mainstem of Cut Bank Creek as shown on Appendix 2. The in-stream flow right set forth in this Article III.E.1.b shall not be subject to change to any other use, provided that the emergency use of water pursuant to Article III.H.5 shall not be considered a change or alteration in use, or a violation of a water right for in-stream flow.

c. The Tribe is entitled to develop such storage as is necessary to effectuate the right set forth in Article III.E.1.a.

d. The Tribe shall defer New Development of the Tribal Water Right set forth in Article III.E.1.a for irrigation uses not relying exclusively on stored water or water diverted from another hydrologic basin for a period of ten years after the Effective Date of this Compact.

2. Priority Date. The priority date of the Tribal Water Right set forth in Article III.E.1 shall be October 17, 1855.

3. Period of Use. The period of use of the water right set forth in Article III.E.1 shall be January 1 to December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions of Article IV of this Compact, the Tribe may divert or permit the diversion of the water right set forth in Article III.E.1 from any point within the Reservation for use within the Reservation and by any means authorized by the Tribal Water Code, or permit the diversion of the water right set forth in Article III.E.1 from a point off the Reservation pursuant to a Lease under Article IV.D.2.

5. Purposes. The water right set forth in Article III.E.1 may be used for any purpose consistent with the terms of this Compact and allowed by Tribal or federal law.

6. Call Protection. All Water Rights Arising Under State Law for Non-Irrigation Uses within Basin 41L shall be protected from any Call from any user of the Tribal Water Right, with the exceptions of Calls for the in-stream flows set forth in Article III.E.1.b, Calls for stored water, and Calls for water diverted from another hydrologic basin.

F. Basin 40F - Milk River Drainage.

1. Quantification.

a. The Tribe has a water right to all Natural Flow and Ground Water available to the United States under the Boundary Waters Treaty and all Ground Water not subject to the Boundary Waters Treaty in Basin 40F within the Reservation, with the exception of those waters subject to the Water Rights Arising Under State Law in Basin 40F on the Reservation.

b. Of the water right set forth in Article III.F.1.a, 2 Cfs shall be dedicated to maintain an in-stream flow in the Milk River, as shown on Appendix 2. The in-stream flow right set forth in this Article III.F.1.b shall not be subject to change to any other use, provided that the emergency use of water pursuant to Article III.H.5 shall not be considered a change or alteration in use, or a violation of a water right for in-stream flow.

c. The Tribe is entitled to develop such storage as is necessary to effectuate the right set forth in Article III.F.1.a.

d. The Tribe shall defer New Development of the Tribal Water Right set forth in Article III.F.1.a for irrigation uses not relying exclusively on stored water or water diverted from another hydrologic basin for a period of ten years after the Effective Date of this Compact.

2. Priority Date. The priority date of the Tribal Water Right set forth in Article III.F.1 shall be October 17, 1855.

3. Period of Use. The period of use of the water right set forth in Article III.F.1 shall be January 1 to December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions of Article IV of this Compact, the Tribe may divert or permit the diversion of the water right set forth in Article III.F.1 from any point within Basin 40F within the Reservation for use within the Reservation and by any means authorized by the Tribal Water Code, or permit the diversion of the water right set forth in Article III.F.1 from a point off the Reservation pursuant to a Lease under Article IV.D.2.

5. Purposes. The water right set forth in Article III.F.1 may be used for any purpose consistent with the terms of this Compact and allowed by Tribal or federal law.

6. Call Protection. All Water Rights Arising Under State Law for Non-Irrigation Uses within Basin 40F on the Reservation shall be protected from any Call from any user of the Tribal Water Right, with the exceptions of Calls for the in-stream flows set forth in Article III.F.1.b, Calls for stored water, and Calls for water diverted from another hydrologic basin.

G. Basin 40T - St. Mary River Drainage.

1. Quantification.

a. St. Mary River. The Tribe has a water right to:

i. 50,000 Acre Feet per Year of water from the St. Mary River Drainage, other than Lee Creek and Willow Creek, subject to the Boundary Waters Treaty and the terms of Article IV.D.4; and

ii. all Ground Water in the St. Mary River Drainage not subject to the Boundary Waters Treaty.

b. Lee Creek. The Tribe also has the right to all Natural Flow available to the United States under the Boundary Waters Treaty and all Ground Water in Lee Creek within the Reservation, with the exception of those waters subject to Water Rights Arising Under State Law in Lee Creek.

c. Willow Creek. The Tribe also has the right to all Natural Flow available to the United States under the Boundary Waters Treaty and all Ground Water in Willow Creek (also known as Rolf Creek) within the Reservation, with the exception of those waters subject to Water Rights Arising Under State Law in Willow Creek.

d. Additional Waters. After satisfaction of all Water Rights Arising Under State Law and full development, pursuant to Article IV.D.4, of the Tribal Water Right set forth in Article III.G.1.a.i, the Tribe also has the right to the remaining portion of the United States' share of the St. Mary River under the Boundary Waters Treaty for any tribally authorized use and need.

e. Storage. The Tribe is entitled to develop such storage within the Reservation as is necessary to effectuate the right set forth in Article III.G.1.a-d.

2. Priority Date. The priority date of the Tribal Water Right set forth in Article III.G.1 shall be October 17, 1855.

3. Period of Use. The period of use of the water right set forth in Article III.G.1 shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions of Article IV of this Compact, the Tribe may divert or permit the diversion of the water right set forth in Article III.G.1 from any point within the Reservation for use within the Reservation and by any means authorized by the Tribal Water Code and, if necessary, federal law, or permit the diversion of the water right set forth in Article III.G.1 from a point off the Reservation pursuant to a Lease under Article IV.D.2.

5. Purposes. The water right set forth in Article III.G.1 may be used for any purpose consistent with the terms of this Compact and allowed by Tribal or federal law.

6. Call Protection. All Water Rights Arising Under State Law within Basin 40T shall be protected from any Call from any user of the Tribal Water Right, except for Calls for stored water or water diverted from another hydrologic basin.

H. Additional Rights to Water. In addition to the water rights specifically set forth in Article III.A-G of this Compact, the Tribe has the following rights to water:

1. Lake Elwell. As part of the Tribal Water Right, the Tribe shall be entitled to an allocation of stored water in Lake Elwell as agreed to by the Parties and as provided by Congress, measured at the dam, for use or disposition by the Tribe for any beneficial purpose, pursuant to the terms of this Compact; provided that such allocation shall be in accordance with the terms and conditions of any Act of Congress ratifying this Compact. Except as directed by Congress, the United States shall have no responsibility or obligation to provide any facility for the transport of water allocated under Article III.H.1 to the Reservation or to any other location.

2. Appurtenant Water Rights. For land within the Reservation acquired after the Effective Date of this Compact, the Tribe has the right to any Water Right Arising Under State Law acquired as an appurtenance to the land. At such time as the acquired land is transferred to trust status, the water right appurtenant to the land acquired shall be added to the Tribal Water Right quantified in this Compact with an October 17, 1855 priority date, provided that the Tribe shall continue to use the acquired right as historically used or may change the use of the right pursuant to the provisions set forth in Article IV.D. The Tribe shall notify DNRC of any acquisition of water upon acquisition or no later than in the Tribe's annual report and shall identify the water right acquired, as set forth in Article IV.I.5. Any water right acquired shall be added as decreed by the Montana Water Court to the list of Existing Uses of the Tribal Water Right as provided in Article IV.I.3 of this Compact.

3. Water Rights Arising Under State Law - Relinquishment or Abandonment. Any portion of a Water Right Arising Under State Law within the Reservation that is voluntarily relinquished or is determined under State law to be abandoned, relinquished, or having otherwise ceased to exist, shall be stricken from the relevant basin decree as a Water Right Arising Under State Law and be entitled to no further protection as such a right pursuant to this Compact.

4. Lakes, Ponds and Wetlands. As part of the Tribal Water Right, the Tribe, its members and Allottees have the right to all water naturally occurring in all lakes, ponds, wetlands and other such water bodies located within the Reservation on trust lands and fee lands owned by the Tribe, its members or Allottees as of the Effective Date of this Compact.

5. Emergency Use. The Tribe has the right to use or authorize the use of water from any source on the Reservation for temporary emergency appropriations necessary to protect lives or property.

I. Use of the Tribal Water Right on the Blackfeet Irrigation Project. The use of the water rights set forth in Article III.C through E on units of the Blackfeet Irrigation Project as part of that Blackfeet Irrigation Project is a use of the Tribal Water Right, and the use of this water shall be subject to federal law.

J. Basin Closures.

1. In those portions of Basins 40F, 40T, 41L and 41M within the Reservation, and from the mainstems of the Reservation boundary streams (Birch Creek, Cut Bank Creek, and the

Two Medicine River), DNRC shall not process or grant any application for an appropriation received after the ratification of this Compact by the Montana legislature becomes effective. Provided that, in accordance with the terms and conditions of Article IV.G.1, DNRC may issue a certificate of water right or permit for use on fee land for Excepted Rights from the sources otherwise closed by this subsection. Provided further that, after such time as the Tribe promulgates an amended water code pursuant to the provisions of Article IV.C, DNRC shall not issue a certificate of water right or permit for use on fee land within the Reservation for Excepted Rights from the sources otherwise closed by this subsection.

2. The basin closures set forth in Article III.J.1 are not a limit on use of the Tribal Water Right as set forth in this Compact.

3. The basin closures set forth in Article III.J.1 are not a limit on Change in Use or transfers of Water Rights Arising Under State Law, subject to the terms and conditions in Article IV.G.2.

K. Proposed Decree. For purposes of entry in the Montana Water Court, the proposed decree of the Tribal Water Right set forth in Article III of this Compact is attached as Appendix 5. If there are differences between Appendix 5 and the Final Decree, the Final Decree shall control.

ARTICLE IV - IMPLEMENTATION OF COMPACT

A. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust by the United States for the benefit of the Tribe, its members and Allottees.

B. Use of Tribal Water Right.

1. Persons Entitled to Use Tribal Water Right. The Tribal Water Right may be used by the Tribe, and/or Persons authorized by the Tribe.

2. Effect of Non-Use of the Tribal Water Right. Non-use of all or any portion of the Tribal Water Right described in Article III shall not constitute a relinquishment, forfeiture, or abandonment of such rights.

C. Tribal Water Right: Administration.

1. Except as otherwise provided in this Compact, the use of the Tribal Water Right shall be administered by the Tribe, and the Tribe has the final and exclusive jurisdiction to resolve all disputes between or among users of the Tribal Water Right. The Tribal Water Right shall be administered and enforced pursuant to an amended tribal water code. The amended code shall be developed and adopted by the Tribe, following public comment, within one year of the Effective Date of this Compact. The code and any subsequent amendments thereto will not take effect until the Secretary has timely approved the code or any subsequent amendment thereto. The amended tribal water code shall include:

a. a process by which any Allottee may request and be provided with an equitable distribution of water for irrigation use on the Allottee's trust allotment;

b. a process for notice and a right to be heard for the consideration and determination of any request by an Allottee for an equitable distribution of water for irrigation use on the Allottee's trust allotment, including a process for formal review of denied or disputed distributions and for resolution of contested administrative decisions;

c. a process by which any Person within the Reservation may apply for use of a portion of the Tribal Water Right, including for their historic use of water;

d. a process by which any Person shall receive authorization for an Excepted Right, without pre-development review, including a Ground Water use, a Stock Water impoundment or pit, or an emergency use to protect lives or property, consistent with standards no more restrictive than those under State law for uses excepted from permitting requirements.

e. a process by which determination of Harm shall be made, which shall include notice to potentially affected water users and the DNRC, due process, a written determination and the basis therefor, and full access to all information on which the determination is based.

f. a process for protecting Ground Water from New Developments in areas where Ground Water may be inadequate due to either quantity or quality.

2. Administration and delivery of the Tribal Water Right within the Blackfeet Irrigation Project shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs (BIA), in accordance with applicable federal laws. In the event the Tribe assumes ownership of the Blackfeet Irrigation Project or the Tribe contracts the administration,

operation and maintenance, and/or other functions of the Blackfeet Irrigation Project under the Indian Self-Determination and Education Assistance Act, P.L. 93-638, or the Tribe establishes a separate entity that assumes ownership of the Blackfeet Irrigation Project or contracts the administration, operation and maintenance, and/or other functions of the Blackfeet Irrigation Project under P.L. 93-638, administration and delivery of the Tribal Water Right within the Blackfeet Irrigation Project shall be conducted by the Tribe in accordance with applicable federal laws.

3. After approval by the Secretary of the Tribe's amended water code, the Tribe shall have sole and exclusive jurisdiction to issue authorizations for Excepted Rights, provided that any filing for use of a portion of the Tribal Water Right for an Excepted Right made with the DNRC shall be made on a form provided by the Tribe and, including any fee submitted in conjunction with the filing, shall be promptly forwarded to the BWRD for processing pursuant to the Tribal water code.

D. Tribal Water Right: New Development or Change in Use.

1. Authorization. Except as specifically set forth in Article IV.D.3, and subject to the conditions set forth immediately below, the Tribe may make or authorize a New Development or Change in Use of the Tribal Water Right. Except as set forth in the tribal water code pursuant to Article IV.C.1.e, any New Development or Change in Use shall not Harm any Water Right Arising Under State Law for Non-irrigation Uses.

2. Lease.

a. The Tribe may make a Lease for use off the Reservation of the following portion of the Tribal Water Right that has been put to use and/or stored prior to the provision of notice to the DNRC, pursuant to Article IV.D.2.b, or the date of the application for Change in Use, as applicable:

i. Water developed by Direct Use from Birch Creek pursuant to Article III.C.1.c, the Badger Creek Drainage and/or Two Medicine River Drainage pursuant to Article III.D.1, and/or the St. Mary River Drainage pursuant to Article III.G.1;

ii. Water stored from the Badger Creek Drainage and/or Two Medicine River Drainage pursuant to Article III.D.1; from the Cut Bank Creek Drainage pursuant to Article III.E.1; from the Milk River Drainage pursuant to Article III.F.1; from the St. Mary River Drainage pursuant to Article III.G.1; and/or in Tiber Reservoir as allocated to the Tribe pursuant to Article III.H.1 or otherwise and federal law; and

iii. That portion of the Tribal Water Right quantified in Article III.C.1.b.i that the Tribe may use for purposes other than in-stream flow pursuant to the terms of that subsection.

b. The Tribe may make a Lease for use off the Reservation from the storage sources listed in Article IV.D.2.a.ii and from the source identified in Article IV.D.2.a.iii so long as it provides notice in advance to the DNRC of the terms of the Lease and any modifications thereto or termination thereof. For Leases from the sources identified in Article IV.D.2.a.ii lasting one irrigation season or less, notice to the DNRC shall be provided as far in advance as practicable. For Leases from the sources identified in Article IV.D.2.a.ii lasting longer then one year, notice shall be provided to the DNRC no later than the later of 120 days prior to the date on which the Lease is to take effect or March 31 of the year in which the Lease is to take effect. Provision of notice regarding Leases from the source identified in Article IV.D.2.a.iii shall be governed by the provisions of the Birch Creek Management Plan (Appendix 1). The point of delivery for a lease from the storage sources listed in Article IV.D.2.a.ii shall be the dam of the storage project. The point of delivery for leases from the source identified in Article IV.D.2.a.iii shall be the Reservation boundary. If disputes arise between or among holders of Water Rights Arising Under State Law as to the reasonable transmission and carriage losses from the point of delivery to the place of use of the Lease, the district court pursuant to its powers and duties under Title 85, Chapter 5, MCA, shall calculate such losses.

c. The Tribe may make a Lease for use off the Reservation from the sources listed in Article IV.D.2.a.i provided that either the Tribe or its assignee, on behalf of the Tribe, first complies with the following provisions of State law as those provisions read on October 31, 2007:

i. Subsections (1)-(3), (5)(a) (with the exception of that portion of subsection (5)(a) that requires the application of 85-2-402(4), which shall not apply) and of 85-2-402(8) through (17), MCA;

ii. Subsections (1) through (8) of 85-2-407, MCA, provided, however, that the term of any such Lease may be for up to 99 years, and the DNRC may approve the renewal of such a Lease for a period of up to 99 years; and

iii. 85-2-408, MCA. If the assignee is the party submitting the change application (pursuant to 85-2-402 and 85-2-407, MCA) on behalf of the Tribe, the assignee must first have obtained approval of the Lease from the Tribe pursuant to the Tribal Water Code.

d. In the event that, after the Effective Date of this Compact, the Montana legislature substantively amends or repeals any of the sections identified in Article IV.D.2.c, the Tribe and the DNRC shall meet no later than 60 days after the effective date of the State legislative action amending or repealing to determine whether the provisions set forth in Article IV.D.2.c or the new provisions of State law shall govern the process for off- Reservation Leases under this Compact. In the event that the Tribe and the DNRC are unable to agree, the provisions of Article IV.D.2.c shall remain in effect. Any modification to the provisions of Article IV.D.2.c agreed to by the Tribe and the DNRC in response to future State legislative action shall be pursuant to and not a modification or amendment to this Compact.

e. If the Tribe receives a good faith offer from a Person for Lease of a portion of the Tribal Water Right in Birch Creek pursuant to Article III.C.1.c to an off-Reservation point of diversion or place of use, or in the Badger Creek Drainage set forth in Article III.D.1 to an off-Reservation point of diversion or place of use, and if delivery facilities exist to otherwise allow the diversion of Badger Creek water into Birch Creek, the Tribe shall allow holders of Water Rights Arising Under State Law using water out of Birch Creek the first opportunity to acquire use of such rights on the same terms and conditions as the good faith offer.

f. If the Tribe receives a good faith offer from a Person for Lease of a portion of the Tribal Water Right in the Cut Bank Creek Drainage set forth in Article III.E.1 to an off-Reservation point of diversion or place of use, the Tribe shall allow holders of Water Rights Arising Under State Law using water from the Cut Bank Creek Drainage the first opportunity to acquire use of such rights on the same terms and conditions as the good faith offer.

g. If the Tribe receives a good faith offer from a Person for Lease of a portion of the Tribal Water Right in the Milk River Drainage set forth in Article III.F.1 to an off-Reservation point of diversion or place of use, the Tribe shall allow holders of Water Rights Arising Under State Law using water from the Milk River Drainage the first opportunity to acquire use of such rights on the same terms and conditions as the good faith offer.

h. If the Tribe receives a good faith offer from a Person for Lease of a portion of the Tribal Water Right in the St. Mary River set forth in Article III.G to an off-Reservation point of diversion or place of use, the Tribe shall allow water users receiving water from the Milk River Project the first opportunity, and other Milk River water users the second opportunity, to acquire use of such rights on the same terms and conditions as the good faith offer.

i. Except as may be provided by Congress, the off-Reservation use of any portion of the Tribal Water Right set forth in Article III.C.1.b, III.D.1, III.E.1 or III.F.1 is limited to a place of use within the Missouri River Basin.

j. No Lease of any portion of the Tribal Water Right may permanently alienate the water right.

k. The Tribe or any Person using diversion or transportation facilities located off the Reservation in connection with a use of the Tribal Water Right shall apply for and obtain all permits, certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water, prior to exercising a use of the Tribal Water Right off the Reservation.

3. Special Rules for Changes in Use of the Birch Creek Water Right Set Forth in Article III.C.1.a.

a. Change in Place of Use. The Tribe may change or authorize a change in the place of use of the water right set forth in Article III.C.1.a only if:

i. the proposed change in place of use is to the Badger-Fisher Unit of the Blackfeet Irrigation Project, or to other areas of the Birch Creek Drainage served by water out of the Badger Creek Drainage; and

ii. there is a need for irrigation water beyond available supplies in those areas due to constraints imposed on the Badger-Fisher Unit by the physical availability of water other than as a result of Leases, a failure of delivery capabilities, or significant adverse environmental impacts of continued delivery of Badger Creek water due to degraded delivery systems or otherwise; and

iii. total annual diversions to the Badger-Fisher Unit pursuant to the water right set forth in Article III.C.1.a do not exceed the volume of water needed to supply 75% of the net irrigation requirement for a crop mix of 75% alfalfa and 25% small grains delivered at 50% efficiency for 6000 acres, and the flow rate of the right set forth in Article III.C.1.a for use in the Upper Birch Creek Drainage is reduced by the flow rate of water being diverted for use in the Badger-Fisher Unit.

b. Change in Purpose of Use. The Tribe may change or authorize a change in the purpose of use of the water right set forth in Article III.C.1.a up to a maximum of 6250 AFY. The relationship between the quantity and flow rate of water proposed for change and the quantity of water available for irrigation pursuant to the water right set forth in Article III.C.1 shall be determined by the following formula: The volume of water proposed to be changed will be divided by 50% to determine the diverted volume of the Tribal change. This diverted volume of the Tribal change is subtracted from the modeled average diversion volume (12,500 acre-feet) to determine the changed average diversion volume. The new irrigation diversion flow rate is established by dividing the changed average diversion volume by the modeled diversion volume and multiplying this quotient by the flow rate set forth in Article III.C.1.a (100 Cfs). Several example scenarios are shown in Appendix 4.

4. Development of the Tribe's St. Mary River Right Set Forth in Article III.G.1.a.i. As directed by Congress, and after appropriate investigation and study, the Parties shall identify and the United States shall provide the Tribe, from Available St. Mary River Water, and/or from any other source mutually agreed to by the Parties, sufficient water to fulfill the Tribe's water right set forth in Article III.G.1.a.i. The fulfillment of the Tribe's water right set forth in Article III.G.1.a.i, pursuant to this subsection, from any water subject to the Milk River Project Water Right may occur only in a manner that causes no injury to the Milk River Project and shall not require current or future Milk River Project water users or their contracting entity or entities to subsidize or pay for any costs required to develop or fulfill the water right set forth in Article III.G.1.a.i. The use of the Tribe's water right set forth in Article III.G.1.a.i, or of any portion of that right, shall commence only after the Parties have mutually agreed in writing that water has been identified and is available to fulfill that right or any portion of it consistent with the terms of this Compact.

E. Subsequent Federal or State Law. Administration under Article IV.C.2 and Article IV.F.1 shall be as set forth in this Compact except as may otherwise be determined by a court of competent jurisdiction or established by Congress.

F. Water Rights Arising Under State Law: Administration.

1. The State shall administer and enforce all Water Rights Arising Under State Law to the use of Natural Flows and Ground Water within and outside the Reservation. The State shall have the final and exclusive jurisdiction to resolve all disputes between holders of Water Rights Arising Under State Law.

2. The State shall not administer or enforce any part of the Tribal Water Right within the Reservation.

G. Water Rights Arising Under State Law: New Uses or Change in Use.

1. Limit on New Uses. DNRC shall not process or grant an application for an appropriation within those portions of the Basins closed pursuant to Article III.J received after the ratification of this Compact by the Montana legislature becomes effective, provided that, DNRC may process applications and issue certificates of water right or permits for use on fee land of those uses excepted from the closures as set forth in Article III.J until such time as the Secretary approves an amended tribal water code promulgated pursuant to the provisions of Article IV.C. After approval of the amended water code by the Secretary, filings for Excepted Rights shall be processed pursuant to the provisions of Article IV.C.3.

2. Change in Use of Water Rights Arising Under State Law within the Reservation. The State may authorize a Change in Use of a Water Right Arising Under State Law within the

Reservation in accordance with State law. DNRC shall provide timely notice to the Tribe of every application for change.

H. Cooperative Ground Water Management. BWRD may designate or modify a controlled Ground Water area within the Reservation pursuant to Article IV.C.1.f and applicable tribal law. DNRC may designate or modify a controlled Ground Water area adjacent to the Reservation pursuant to applicable State law. DNRC may manage a permanent or temporary controlled Ground Water area adjacent to the Reservation in cooperation with BWRD.

I. Information Sharing.

1. Within one year after a hydrologic basin subject to this Compact is finally decreed by the Montana Water Court, the DNRC shall provide the BWRD and the United States with a report listing all decreed Water Rights Arising Under State Law within that hydrologic basin.

2. Within one year after the date the ratification of this Compact by the Montana legislature becomes effective, the DNRC shall provide the BWRD and the United States with a report listing all uses pursuant to permits and water reservations, and those uses excepted from the permitting requirements of State law to the extent that the DNRC has such information.

3. Within one year after the ratification of this Compact by the Montana legislature becomes effective, the BWRD and the United States shall provide the DNRC with a report listing all Existing Uses of the Tribal Water Right, provided that, due to the small and varied nature of the traditional religious and cultural uses identified in Article III.A, such uses need not be included on the report required by this subsection. The Parties shall concur in the listing of all Existing Uses of the Tribal Water Right within six months after receipt of the report.

4. On an annual basis DNRC shall provide the Tribe and the United States with a listing of all Excepted Rights for which a certificate of water right or permit has been issued or a Change in Use has been approved by DNRC within the Reservation and in drainages affected by this Compact, and an ownership update for each water right within the Reservation and in drainages affected by this Compact whose owner of record has been changed in DNRC's database.

5. On an annual basis BWRD shall provide the DNRC and the United States with an update since the last report listing all New Development of the Tribal Water Right described in this Compact within and outside the Reservation, of all Changes in Use of water rights within and outside the Reservation, and of all appurtenant water rights acquired pursuant to Article III.H.2.

6. The BWRD, the DNRC, and the United States may agree to modify the reporting requirements set forth in Article IV.I. Such modification is pursuant to, and shall not be deemed a modification of, this Compact.

7. Any Party may request additional information from any other Party to assist in reviewing any report made by one Party to another.

J. Enforcement: Blackfeet-Montana Compact Board.

1. Establishment of Board. There is hereby established the Blackfeet-Montana Compact Board. The Board shall consist of three members: one member selected by the Governor of the State of Montana, after consultation with affected water users; one member appointed by the Chairman of the Blackfeet Tribal Business Council; and one member selected by the other two members. All members shall be appointed within six months of the Effective Date of this Compact and within thirty days of the date any vacancy occurs. If an appointment is not timely made by the Governor, the Director of DNRC or the Director's designee shall fill the State's position. If an appointment is not timely made by the Chairman of the Blackfeet Tribal Business Council, the Director of BWRD or the Director's designee shall fill the Tribe's position. Each member shall serve a five-year term and shall be eligible for reappointment. The initial term of each member shall be staggered with one member serving a five-year term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen by lot. Expenses of the members appointed by the State and the Tribe shall be borne by the entity appointing the member. The expenses of the third member and all other expenses shall be borne equally by the Tribe and the State, subject to the availability of funds.

2. Membership. Should the two appointed members fail to agree on the selection of a third member within sixty days of the date of appointment of the second member, or within thirty days after any vacancy occurs, the following procedure shall be utilized:

a. Within five days thereafter each member shall nominate three persons to serve as a member of the Board;

b. Within fifteen days thereafter each member shall reject two of the persons nominated by the other member;

c. Within five days thereafter, the remaining two nominees shall be submitted to the chief judge of the United States District Court for the District of Montana for selection of the third member of the Board.

3. Quorum and Vote Required. Two members of the Board shall constitute a quorum if reasonable notice of the time, place, and purpose of the meeting, hearing, or other proceeding has been provided in advance to the absent member. All Board decisions shall be by a majority of the Board.

4. Jurisdiction of the Board.

a. The Blackfeet-Montana Compact Board shall have jurisdiction to resolve controversies over the right to the use of water as between the Parties or holders of water rights developed or authorized under the Tribal Water Right and holders of Water Rights Arising Under State Law. Such controversies shall include, but shall not be limited to, disputes as to the meaning of this Compact, disputes over the application and interpretation of the provisions of Article IV.D.3, disputes over the application and interpretation of the provisions of the Birch Creek Management Plan, and disputes between holders of Excepted Rights issued pursuant to Article IV.C.3 who are not enrolled members of the Tribe and other water right holders under either State or tribal law.

b. The jurisdiction of the Board shall not extend to the administration or distribution of water on lands served by the Milk River Project, nor to the diversion of water made outside the Reservation for Milk River Project use, nor to the administration or distribution of water on lands served by the Blackfeet Irrigation Project, nor to the administration or distribution of water on lands served by the Pondera County Canal and Reservoir Company.

5. Prerequisite Administrative Procedures.

a. Any Tribal Water Right holder concerned that a use of water by a holder of a Water Right Arising Under State Law is inconsistent with the Compact shall first contact the BWRD. If the BWRD and the DNRC are unable to resolve the issue in a manner acceptable to the Tribal Water Right holder within a reasonable time through discussion, the BWRD or the Tribal Water Right holder may seek relief through the Compact Board. The DNRC agrees to assist the BWRD in obtaining reasonable access onto the land of the holder of the Water Right Arising Under State Law to acquire information regarding the challenged use.

b. Any holder of a Water Right Arising Under State Law concerned that an exercise of the Tribal Water Right is inconsistent with the Compact shall first contact the DNRC. If the DNRC and the BWRD are unable to resolve the issue in a manner acceptable to the water right holder within a reasonable time through discussion, the DNRC or the water right holder may seek relief through the Compact Board. The Tribe agrees to allow the DNRC reasonable access onto Tribal land or to assist the DNRC in obtaining reasonable access onto the land of the Tribal Water Right holder to acquire information regarding the challenged exercise.

c. The BWRD and the DNRC may jointly develop supplemental procedures as necessary or appropriate after consultation with affected water right holders. Such supplemental procedures are pursuant to, and shall not be deemed a modification of, this Compact.

d. Any authorized user of a portion of the Tribal Water Right appealing a decision of the DNRC to the Compact Board may seek technical assistance from the BWRD in preparing and presenting the appeal.

e. Any holder of a Water Right Under State Law appealing a decision of the BWRD to the Compact Board may seek technical assistance from the DNRC in preparing and presenting the appeal.

6. Powers and Duties.

a. Hearings. The Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint technical experts. The Tribe and the State shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribe and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The Persons involved in the controversy may present evidence and cross examine any witnesses. The Board shall determine the controversy and grant any appropriate relief, including a temporary order; provided that, the Board shall have no power to award money damages, costs, or attorneys' fees. All decisions of the Board shall be in writing, and, together with a written justification for the decision and any dissenting opinions, shall be served personally or by certified mail on all Persons involved in the proceeding before the Board, the Tribe, the State and the United States. The Board shall adopt necessary rules and regulations to carry out its responsibilities within six months after its first meeting. All records of the Board shall be open to public inspection, except as otherwise ordered by the Board consistent with applicable federal, State and tribal law.

b. Appointment of Water Commissioner.

i. The Board shall have the authority to appoint one or more commissioners to provide day to day administration of water subject to this Compact, including the opening and closing of headgates. The Tribe and the State shall agree on a recommendation for each commissioner to be appointed by the Board. If the Tribe and the State fail to agree, each may nominate one individual for consideration for each commissioner position, and the Board shall select from between the nominees.

ii. Under the jurisdiction of the Board, the commissioners shall have the authority to administer and distribute water on the Reservation and from the off-reservation portions of the Reservation boundary streams (the mainstems of Birch Creek, Cut Bank Creek and the Two Medicine River), to water right holders under the Tribal Water Right and the holders of Water Rights Arising Under State Law according to the rights fixed by all applicable decrees and this Compact. The authority of any commissioners appointed pursuant to this Article IV.J.6.b, as it pertains to facilities owned by the United States, shall extend only to the provision of written orders to the federal representative with the authority to adjust diversions or releases, which the federal representative, or his or her designee, shall then promptly carry out, so long as the federal representative determines that execution of the order does not threaten the safety, security or physical integrity of the facility, and does not extend to the actual opening or closing of headgates. The authority of any commissioners appointed pursuant to this Article IV.J.6.b, as it pertains the use of the Milk River Project Water Right, shall extend only to the delivery of water to the diversion facilities of the Milk River Project on the Reservation and shall not extend to the administration, diversion or distribution of water to or from any facilities or lands served by the Milk River Project off the Reservation. The authority of any commissioners appointed pursuant to this Article IV.J.6.b, as it pertains to portions of the Tribal Water Right used within the Blackfeet Irrigation Project, extends only to the delivery of water to Blackfeet Irrigation Project diversion facilities and shall not extend to the administration of that water on lands served by the Blackfeet Irrigation Project, which shall remain subject to Article IV.C.2. The authority of any commissioners appointed pursuant to this Article IV.J.6.b, as it pertains to the use of the Water Rights Arising Under State Law of the Pondera County Canal and Reservoir Company (PCCRC), extends only to the delivery of water to PCCRC diversion facilities from Birch Creek and shall not extend to the administration of that water on lands served by PCCRC.

iii. The State and the Tribe shall share the costs of any water commissioners appointed by the Board.

7. Review and Enforcement of Board Decisions.

a. Decisions by the Board shall be effective immediately, unless stayed by the Board. Persons involved in the proceedings before the Board may appeal any final decision by the Board to a court of competent jurisdiction within thirty days of such decision. The hearing on appeal shall be a trial de novo. The notice of appeal shall be filed with the Board and served personally or by certified mail upon all Persons involved in the proceeding before the Board, the Tribe, the State and the United States.

b. Unless an appeal is filed within thirty days of a final decision of the Board, as provided in Article IV.J.7.a, any decision of the Board shall be recognized and enforced by any court of competent jurisdiction on petition of the Board, or any Person before the Board in the proceeding in which the decision was made.

c. A court of competent jurisdiction in which a timely appeal is filed pursuant to Article IV.J.7.a, or in which a petition to confirm or enforce is filed pursuant to Article IV.J.7.b, may order such temporary or permanent relief as it considers just and proper.

d. An appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to Article IV.J.7.a, or in which a petition to confirm or enforce is filed pursuant to Article IV.J.7.b, in the manner and to the same extent as from orders or judgments of the court in a civil action.

e. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the court the record of the proceedings before the Board within sixty days of filing of a notice of appeal.

8. Waiver of Immunity. The Tribe and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, in order to permit the resolution of disputes under this Compact by the Blackfeet-Montana Compact Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribe or the State shall not extend to any action for money damages, costs, or attorneys' fees. The Parties agree that only Congress can waive the immunity of the United States. The participation of the United States in the proceedings of the Compact Board shall be as provided by Congress.

K. Notice and Reporting. All notices and reports required by this Compact to be delivered to or served on a Party shall be sent to:

1. The Chairman of the Blackfeet Tribal Business Council, Browning, Montana;

2. The Director of DNRC, Helena, Montana; and

3. The Director of the Rocky Mountain Regional Office of the Bureau of Indian Affairs, Billings, Montana.

ARTICLE V - DISCLAIMERS AND RESERVATION OF RIGHTS

A. No Effect on Other Tribal Rights or Federal Reserved Water Rights.

1. Except as otherwise provided herein, the relationship between the Tribal Water Right described herein and any rights to water of any other Indian Tribe, or of any federally derived water right of an individual, or of the United States on behalf of such Tribe or individual shall be determined by the rule of priority.

2. Nothing in this Compact may be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other Indian tribes, tribal members, or Indian owner of trust land of other Indian tribes outside of the Blackfeet Reservation.

3. Nothing in this Compact is otherwise intended to affect or abrogate a right or claim of an Indian Tribe other than the Blackfeet Tribe.

4. Except as provided herein and authorized by Congress, nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of the United States on federal lands outside the Reservation.

B. General Disclaimers. Nothing in this Compact shall be so construed or interpreted:

1. As a precedent for the litigation of reserved water rights;

2. As a precedent for the interpretation or administration of future compacts between the United States and the State, or the United States and any other state;

3. Except as provided in Article III.J pertaining to basin closures, to preclude the acquisition or exercise of a Water Right Arising Under State Law to the use of water by any Allottee or member of the Tribe outside the Reservation by purchase of such right or by application to the State in accordance with State law;

4. To determine the relative rights inter sese of Persons using water under the authority of the State or the Tribe;

5. To limit in any way the rights of the Parties or any other Person to litigate any issues or questions not resolved by this Compact;

6. To authorize the taking of a water right that is vested under State or federal law;

7. To create or deny substantive rights through headings or captions used in this Compact;

8. To address or prejudge how, in any interstate or international apportionment, the Tribal Water Right shall be counted;

9. To constitute a waiver of sovereign immunity by the Tribe or State, except as is expressly set forth in this Compact;

10. To constitute a waiver of sovereign immunity by the United States except as expressly set forth in 43 U.S.C. 666 (1952) or as otherwise provided by Congress;

11. To prohibit the Tribe, its members, or Allottees, or the United States on behalf of the Tribe, its members, or Allottees, or the United States in any other capacity from objecting in any general stream adjudication in Montana Water Court to any claims to water rights;

12. To prevent the Tribe, its members or Allottees, or the United States on behalf of the Tribe, its members or Allottees, from filing an action in a court of competent jurisdiction to prevent any Person or Party from interfering with the Tribe in the enjoyment of the Tribal Water Right;

13. To affect or determine the applicability of any State or federal law, including, without limitation, environmental and public safety laws, on activities of the Tribe, its members, or Allottees, the State or holders of Water Rights Arising Under State law, or the United States;

14. To limit any existing, present or future claims of the Tribe, its members or Allottees, or the United States on behalf of the Tribe, its members or Allottees, concerning water quality;

15. To prevent the Montana Water Court from adjudicating any properly filed claims to the use of water within the Reservation;

16. Except as expressly provided herein and as required by Congress, to modify the obligation of any agency of the United States pursuant to federal law;

17. To limit the ability of the Tribe, the State, or the United States to enforce any tribal, State, or federal laws or any common law rights relating to the protection of the environment;

18. To prejudice any right that Tribal members may have to secure a portion of the Tribal Water Right from the Tribe;

19. To affect the right, if any, of the Tribe to establish, through a final court judgment or congressional act, that its aboriginal or treaty title to lands outside the Reservation, including but not limited to lands within Glacier National Park and the Lewis and Clark National Forest, has not been extinguished; and

20. To determine the rights, if any, of the Tribe on lands within Glacier National Park and the Lewis and Clark National Forest.

21. Nothing in this Compact shall be construed or interpreted to create any right, title or interest in federal lands off the Reservation.

C. Rights Reserved. The Parties expressly reserve all rights not granted, recognized or relinquished in this Compact.

D. Obligations of the United States Contingent.

1. Notwithstanding any other language in this Compact, except as authorized under other provisions of federal law, the obligations of the United States under this Compact shall be contingent on ratification and necessary authorization by Congress.

2. The expenditure or advance of any money or the performance of any work by the United States or the Tribe pursuant to this Compact which may require appropriation of money by Congress or allotment of funds is contingent on such appropriation or allotment being made.

3. The State and the Tribe recognize that this Compact has not been approved by the United States or any agency thereof and ratification by the Montana legislature or ratification by the Tribe in no manner binds or restricts the discretion of the United States in the negotiation of all related matters.

E. Obligations of the State Contingent. The expenditure or advance of any money or the performance of any work by the State pursuant to this Compact which may require appropriation of money by the Montana legislature or allotment of funds shall be contingent on such appropriation or allotment being made.

ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

A. State Contribution to Settlement. The Parties agree that the State contribution to settlement shall be negotiated by the State, the Tribe, and the United States as part of the negotiations on the federal legislation contemplated by Article VI.C. The agreement to, expenditure, or advance of any State contribution which may require authorization and appropriation of money by the Montana legislature or allotment of funds is contingent on such appropriation or allotment being made.

B. Federal Contribution to Settlement. The Parties agree that the federal contribution to settlement shall be negotiated by the Tribe, the State, and the United States as part of the negotiations on the Federal legislation.

C. Federal Legislation. The Tribe and the State agree to seek ratification of the Compact by Congress and any additional federal legislation necessary to effectuate the Compact.

ARTICLE VII - FINALITY

A. Ratification and Effectiveness of Compact.

1. Following the first ratification by any Party, the terms of this Compact may not be modified without the consent of the Parties.

2. Notwithstanding any other provision in this Compact, the Tribe reserves the right to withdraw as a Party if:

a. Congress has not ratified this Compact and authorized appropriations within four years from the date the ratification of the Compact by the Montana legislature becomes effective;

b. Appropriations are not made in the manner contemplated by the federal legislation ratifying this Compact;

c. The Parties do not reach agreement on the State contribution to settlement;

d. The State has not authorized appropriations within five years from the date the Compact is ratified by the United States; or

e. Appropriations are not made by the State in the manner contemplated by any agreement for contributions to settlement made pursuant to Article VI.A.

3. The Tribe may exercise its right to withdraw from the Compact under Article VII.A.2 by sending to the Governor of Montana and to the Secretary of the Interior by certified mail a resolution of the Blackfeet Tribal Business Council stating the Tribe's intent to withdraw and specifying a reason for withdrawal and a withdrawal date not sooner than one hundred and twenty days from the date of the resolution. On the date designated in the resolution for Tribal withdrawal, this Compact shall become null and void without further action by any Party, and the Parties agree to resume negotiation in good faith for quantification of the water rights of the Blackfeet Tribe and entry of a decree in a court of competent jurisdiction.

4. Notwithstanding any other provision in this Compact, the State reserves the right to withdraw as a Party to this Compact if:

a. the Tribe and Congress have not ratified this Compact within four years from the date the ratification of the Compact by the Montana legislature becomes effective;

b. Congress requires a State contribution to settlement that exceeds the contributions described in Article VI.A;

c. Congress does not authorize and appropriate the federal share of funding agreed to pursuant to Article VI.B; or

d. the DNRC does not concur in the list of Existing Uses of the Tribal Water Right pursuant to Article IV.I.2.

5. The State may exercise its right to withdraw by sending to the Chairman of the Blackfeet Tribal Business Council and to the Secretary of the Interior a letter delivered by certified mail from the Governor of the State of Montana stating the State's intent to withdraw and specifying a reason for withdrawal and a withdrawal date not sooner than one hundred and twenty days from the date of the letter. On the date designated in the letter for State withdrawal, this Compact shall become null and void without further action by any Party, and the Parties agree to resume negotiation in good faith for quantification of the water rights of the Blackfeet Tribe and entry of a decree in a court of competent jurisdiction.

6. Notwithstanding any other provision in this Compact, the Department of the Interior reserves the right to refuse to support federal legislation ratifying this Compact.

B. Incorporation into Decrees.

1. Within one hundred eighty days of the date this Compact is ratified by the Tribe, the State, and Congress, whichever is latest, the Tribe, the State, or the United States shall file, in the case In the Matter of the Adjudication of the Existing and Reserved Rights to the Use

of Water, Both Surface and Underground, of the Blackfeet Tribe of the Blackfeet Reservation within the State of Montana, Civ. No. WC-91-1, pursuant to the provisions of State law, a motion for entry of the proposed decree set forth in Appendix 5 as the decree of the water rights held by the United States in trust for the Blackfeet Tribe. If the Montana Water Court does not approve the proposed decree submitted with the motion within three years following the filing of the motion, the Compact shall be voidable by agreement of the State and the Tribe. If the Montana Water Court approves the proposed decree within three years, but the decree is subsequently set aside by the Montana Water Court or on appeal, the Compact shall be voidable by agreement of the State and the Tribe. Any effect of the failure of approval or setting aside of the decree on the approval, ratification, and confirmation by the United States shall be as provided by Congress. The Parties understand and agree that the submission of this Compact to a State court or courts, as provided for in this Compact, is solely to comply with the provisions of State law, and does not expand the jurisdiction of the State court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

2. Consistent with 3-7-224, MCA, setting forth the jurisdiction of the chief water judge, for the purposes of 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to Article III, and Appendix 5 (proposed decree), and may extend to other sections of the Compact only to the extent that they relate to the determination of existing water rights. The final decree shall consist of Article III as displayed in Appendix 5, and such other information as may be required by 85-2-234, MCA. Nevertheless, pursuant to 85-2-702(3), MCA, the terms of the entire Compact must be included in the preliminary decree without alteration for the purpose of notice.

C. Disposition of Federal Suit.

1. On issuance of a final decree by the Montana Water Court or its successor, and the completion of any direct appeals therefrom, or on expiration of the time for filing any such appeal, the United States, the Tribe, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed.R.Civ.P., to dismiss without prejudice the claims of the Tribe, Tribal members, and Allottees and any claims made by the United States for benefit of the Tribe, Tribal members, and Allottees in United States v. Aageson, No. CIV-79-21-GF (filed April 5, 1979). The case may only be resumed if the State or Tribe exercises their rights under Article VII.A.

2. The Decree shall be filed by the Parties as a consent decree in Aageson, or in federal court as a new proceeding after the dismissal of Aageson conditional on agreement by the Parties to seek the necessary State, Tribal, and federal legislation to implement the remaining provisions of the Compact, if it is finally determined in a judgment binding on the State of Montana that the State courts lack jurisdiction over, or that the State court proceedings are inadequate to adjudicate some or all of the water rights asserted in Aageson.

D. Settlement of Tribal Water Right Claims.

1. The water rights and other benefits confirmed to the Tribe in this Compact are in full and final satisfaction of and are intended to be in replacement of and substitution for all claims to water or to the use of water by the Tribe, Tribal members, and Allottees and the United States on behalf of the Tribe, Tribal members, and Allottees existing on the Effective Date of this Compact, including water rights claims based on or recognized in Conrad Inv. Co. v. United States, 161 F. 829 (9th Cir. 1908), within the Reservation.

2. In consideration of the rights confirmed to the Tribe, Tribal members, and Allottees in this Compact, and of performance by the State and the United States of all actions required by this Compact, and on entry of a final order issuing the decree of the Tribal Water Right held in trust by the United States as quantified in this Compact and displayed in Appendix 5, and except for water rights, benefits and uses confirmed in this Compact, the Tribe and the United States as trustee for the Tribe, Tribal members, and Allottees hereby waive, release, and relinquish any and all claims to water rights or to the use of water within the Reservation existing on the Effective Date of this Compact.

3. Any claim to water by the Tribe, its members or Allottees within the Reservation shall be satisfied out of the Tribal Water Right confirmed by this Compact, except for any Water Rights Arising Under State Law held by the Tribe, its members or Allottees as of the Effective Date of this Compact, which shall be satisfied pursuant to their own terms.

E. Settlement of Tribal Claims Against the United States. Waiver of claims against the United States, by the Tribe, its members and Allottees shall be as provided by Congress.

F. Binding Effect. After the Effective Date of this Compact and entry of a final decree, its terms shall be binding on:

1. The State and any Person using, claiming or in any manner asserting any right under the authority of the State to the use of water in Montana; provided that, the validity of consent, ratification, or authorization by the State is to be determined by Montana law;

2. The Tribe and any Person using, claiming or in any manner asserting any right to the use of the Tribal Water Right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribe or Tribal members, or any rights arising under tribal law; provided that, the validity of consent, ratification or authorization by the Tribe is to be determined by Tribal law; and

3. The United States and any Person using, claiming or in any manner asserting any right under the authority of the United States to the use of water in Montana; provided that, the validity of consent, ratification or authorization by the United States is to be determined by federal law.

ARTICLE VIII - LEGISLATION/DEFENSE OF COMPACT

A. State Legislation. The State and Tribe agree to seek ratification of the Compact by the Montana legislature and any additional State legislation necessary to effectuate the Compact.

B. Federal Legislation. The State and Tribe agree to seek ratification of the Compact by Congress and any additional federal legislation necessary to effectuate the Compact.

C. Tribal Legislation. The State and Tribe agree to seek ratification of the Compact by the Blackfeet Tribe and any Tribal legislation necessary to effectuate the Compact.

D. Defense of the Compact. The Parties agree to defend the Compact after its Effective Date from all challenges and attacks and in all proceedings pursuant to Article VII.B and C, and agree that no provision of the Compact shall be modified as to substance except as may be provided in the Compact, or by agreement among the Parties.

History: En. Sec. 1, Ch. 204, L. 2009.

85-20-1502 reserved.

85-20-1503. Definitions. As used in 85-20-1503 through 85-20-1506, the following definitions apply:

(1) "Blackfeet Tribe" means the Blackfeet Tribe of the Blackfeet Indian reservation of Montana; and

(2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

History: En. Sec. 1, Ch. 489, L. 2007.

85-20-1504. Blackfeet Tribe water rights compact mitigation account — use. (1) There is an account within the state special revenue fund called the Blackfeet Tribe water rights compact mitigation account. The department shall administer the account. All interest and other income earned on money in the account must be deposited in the account.

(2) The Blackfeet Tribe water rights compact mitigation account may be used only for:

(a) expenditures for grants to or matching funds for federal or other grants to water right holders under state law for water from Birch Creek, Badger Creek, Cut Bank Creek, the Two Medicine River, and the portion of the Milk River within the exterior boundaries of the Blackfeet Indian reservation for projects approved by the department to enhance water availability or otherwise mitigate the economic and hydrologic impacts on water right holders under state law caused by the development of the Blackfeet Tribe's water rights under a water rights compact pursuant to 85-2-702 quantifying the water rights of the Blackfeet Tribe; and

(b) implementation of the water rights compact among the Blackfeet Tribe, the state, and the United States and any associated agreements as may be specified in the compact or agreements.

(3) (a) At least $4.5 million of this account must be dedicated to mitigate impacts on water right holders under state law for use of water out of Birch Creek.

(b) The amount of $14 million in this account must be used to mitigate impacts of development of the tribal water right on water users as provided for in a February 13, 2009, amendment to an agreement between the Blackfeet Tribe of the Blackfeet Indian reservation and the state of Montana regarding Birch Creek water use entered into January 31, 2008.

(c) The amount of $10 million in this account must be held in escrow. The department shall negotiate the terms of an escrow agreement.

(4) Funds from this account may not be disbursed unless a water rights compact among the Blackfeet Tribe, the state, and the United States has been finally ratified by the legislature, the Congress of the United States, and the Blackfeet Tribe.

(5) Money in the Blackfeet Tribe water rights compact mitigation account is statutorily appropriated, as provided in 17-7-502, to the department of natural resources and conservation.

History: En. Sec. 2, Ch. 489, L. 2007; amd. Sec. 2, Ch. 57, L. 2011; amd. Sec. 1, Ch. 209, L. 2017; amd. Sec. 1, Ch. 623, L. 2023.

85-20-1505. Blackfeet Tribe water rights compact infrastructure account — use. (1) There is an account within the state special revenue fund called the Blackfeet Tribe water rights compact infrastructure account. The department shall administer the account.

(2) The Blackfeet Tribe water rights compact infrastructure account may be used only for water-related infrastructure projects within the exterior boundaries of the Blackfeet Indian reservation.

(3) Funds from this account may not be disbursed unless a water rights compact among the Blackfeet Tribe, the state, and the United States has been finally ratified by the legislature, the Congress of the United States, and the Blackfeet Tribe.

(4) All interest and other income earned on money in the account must be deposited in the account.

(5) All proceeds of the bonds authorized in 85-20-1511 must be deposited in a bond proceeds subaccount established in the Blackfeet Tribe water rights compact infrastructure account.

(6) Subject to subsection (3), money in the Blackfeet Tribe water rights compact infrastructure account, including the proceeds of the bonds authorized in 85-20-1511 deposited in the bond proceeds subaccount, is statutorily appropriated, as provided in 17-7-502, to the department of natural resources and conservation for the purpose of funding the state's portion of the cost of the Four Horns Project as provided for in the agreement between the Blackfeet Tribe of the Blackfeet Indian reservation and the state of Montana regarding Birch Creek water use, dated January 31, 2008, as may be amended.

History: En. Sec. 3, Ch. 489, L. 2007; amd. Sec. 2, Ch. 204, L. 2009; amd. Sec. 3, Ch. 147, L. 2011.

85-20-1506. Administrative rules. (1) The department shall adopt reasonable rules for implementing and administering 85-20-1503 through 85-20-1505.

(2) In proposing rules, the department shall:

(a) consult with affected stakeholders, including the Pondera County conservation district and the Glacier County conservation district; and

(b) give priority to mitigating impacts on water right holders under state law who use water out of Birch Creek.

History: En. Sec. 4, Ch. 489, L. 2007.

85-20-1507 through 85-20-1510 reserved.

85-20-1511. Authorization of bonds — condition. (1) Subject to subsection (3) and upon request of the director of the department of natural resources and conservation, the board of examiners may issue and sell general obligation bonds in a principal amount not exceeding $16.15 million, of which $16 million is to pay the state's costs for water-related infrastructure projects within the exterior boundaries of the Blackfeet Indian reservation as provided for in 85-20-1505 and no more than $150,000 is to pay bond issuance costs.

(2) (a) Except as provided in subsection (2)(b), the proceeds from the bonds authorized under this section must be deposited in a bond proceeds subaccount created in the Blackfeet Tribe water rights compact infrastructure account provided for in 85-20-1505.

(b) The proceeds to pay bond issuance costs must be deposited into a state special revenue account.

(3) The bonds must be sold and issued pursuant to the provisions of Title 17, chapter 5, part 8.

(4) The bonds may not be issued or sold unless a water rights compact among the Blackfeet Tribe, the state, and the United States has been finally ratified by the Blackfeet Tribe, the legislature, and the Congress of the United States.

History: En. Sec. 1, Ch. 147, L. 2011.

Part 16

United States of America, Fish and Wildlife Service, National Bison Range-Montana Compact

85-20-1601. United States of America, fish and wildlife service, national bison range-Montana compact ratified. This Compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims to federal reserved water rights for the National Bison Range administered by the U.S. Fish and Wildlife Service within the State of Montana.

ARTICLE I - RECITALS

WHEREAS, in 1979, the United States brought several actions in the United States District Court for the District of Montana to adjudicate, inter alia, its rights to water with respect to the National Bison Range, see United States v. Abell, No. CV 79-33-M (filed April 5, 1979);

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America; see "the McCarran Amendment," 43 U.S.C. 666(a)(1) (1952);

WHEREAS, the State of Montana in 1979 pursuant to Title 85, Chapter 2 of the Montana Code Annotated (MCA), commenced a general adjudication of the rights to use water within the State of Montana, including all federal reserved and appropriative water rights;

WHEREAS, the Montana Reserved Water Rights Compact Commission, pursuant to 85-2-703, MCA, is authorized to negotiate settlement of water rights claims filed by the United States for areas in which the United States claims reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the National Bison Range, in the State of Montana;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-517 and 519 (1968);

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. § 1457 (1986, Supp 1992), inter alia; and

WHEREAS, it is in the best interest of all Parties that the water rights claims for the National Bison Range be settled through agreement between the State of Montana and the United States;

NOW THEREFORE, the Parties agree to enter into this Compact for the purpose of settling the water rights claims of the United States for the National Bison Range.

ARTICLE II - DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

(1) "Abstract" means the copy of the documents entitled "Abstract of U.S. Fish and Wildlife Service Water Rights" referenced in this Compact as Appendices 3, 4, 5 and 6.

(2) "Acre-foot" or "Acre-feet" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet of water.

(3) "Acre-foot per year" or "Acre-feet per year" or "AFY" means an annual quantity of water measured in acre-feet over a period of a year.

(4) "Animal Unit" means a measure of animal numbers, where one male bison equals 1.5 Animal Units, one female bison equals 0.9 Animal Units, one elk equals 0.75 Animal Units, and one mule deer, whitetail deer, bighorn sheep, or antelope equals 0.2 Animal Units.

(5) "Arising Under State Law" means, as applied to a water right, a water right created under Montana law and does not include water rights created under federal law.

(6) "Change in Use" means, as applied to the National Bison Range water right, a change in the point of diversion, the place of use, the purpose of use, or the place of storage.

(7) "Consumptive Use" means a use of water that removes water from the source of supply such that the quality or quantity is reduced or the timing of return delayed, making it unusable or unavailable for use by others, and includes evaporative loss from impoundments and natural lakes.

(8) "Department" means the Montana Department of Natural Resources and Conservation, or any successor agency.

(9) "Effective Date" means the date on which the Compact is given ratification by the Montana Legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever date is latest.

(10) "FWS" means the United States Fish and Wildlife Service of the United States Department of the Interior, or any successor agency.

(11) "Ground Water" means any water that is beneath the surface of the ground.

(12) "National Bison Range" means those lands located in the State of Montana that were withdrawn from disposition and reserved by the Act of May 23, 1908, 35 Stat. 267; and that were expanded by the Agricultural Appropriations Bill of 1910 (35 Stat. 1051 - Act of March 4, 1909). The lands that comprise the National Bison Range are depicted on the map attached as Appendix 1 to this Compact.

(13) "Nonconsumptive Use" means the use of a water right considered to be nonconsumptive by the decree, permit, or law authorizing the use because it results in no depletion of water from the source.

(14) "Party" or "Parties" means the State of Montana, the United States of America or both.

(15) "Person" or "Persons" means an individual or individuals or any other entity, public or private, including the State, a tribe and the United States and all officers, agents, and departments thereof.

(16) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof, and unless otherwise indicated, for purposes of notification or consent "State" means the Director of the Department, or the Director's designee.

(17) "Tribal Water Right" means those water rights held by the Confederated Salish and Kootenai Tribes (the "Tribes" or "CSKT") or by the United States in trust for the Tribes, their members and allottees.

(18) "United States" means the federal government and all officers, agencies, and departments thereof, and unless otherwise indicated, for purposes of notification or consent other than service in litigation "United States" means the Secretary of the Department of the Interior, or the Secretary's designee.

ARTICLE III - NATIONAL BISON RANGE WATER RIGHT

The Parties agree that the following water rights are in settlement of the reserved water rights of the United States for the National Bison Range.

A. Purpose of Reservation for the National Bison Range. The National Bison Range was created on May 23, 1908 for the purpose of being a permanent range for the care and maintenance of a herd of bison and other mammals. 35 Stat. 267, 35 Stat. 1051. An executive order of December 22, 1921, (No. 3596) added the purpose of a bird refuge to the National Bison Range as well.

B. Quantification. Subject to the terms of Article IV, the United States shall have the right to water for the following purposes from the sources identified on National Bison Range lands.

1. Wildlife Use.

a. Consumptive Use. The United States has federal reserved water rights for Consumptive Use for wildlife purposes at the locations identified in the table attached as Appendix 2, provided that the total Consumptive Use for wildlife purposes on National Bison Range lands shall not exceed the amount of water needed to feed and water the historic maximum carrying capacity of the National Bison Range of 755 Animal Units. The specific elements of these rights are set forth in the Abstracts attached as Appendix 3 to this Compact.

b. Nonconsumptive Use. The United States also has federal reserved water rights in the amount of 18.48 Acre-feet per year for largely Nonconsumptive Uses to fill the Ravalli Potholes, when the water is naturally available, and an in-stream flow in the amount of 177 gallons per minute from Mission, Pauline, Trisky and Elk Creeks, when such flows are naturally available. The specific elements of these rights are set forth in the Abstracts attached as Appendix 4 to this Compact.

2. Administrative Uses.

a. Current Administrative Uses. The United States has federal reserved rights for Consumptive Use for current administrative uses on National Bison Range lands totaling 35.2 Acre-feet per year. The United States also has a federal reserved water right of up to 536 Acre-feet per year of flood flows from Mission Creek for largely Nonconsumptive Uses for administrative purposes, when such flows are naturally available. The specific elements of these rights are set forth in the Abstracts attached as Appendix 5 to this Compact.

b. Future Administrative Uses. The United States has federal reserved water rights from Ground Water for Consumptive Use for future administrative uses up to a total additional volume of 15 Acre-feet per year to fulfill the purposes of the National Bison Range. The types of use of the United States' federal reserved water rights for administrative uses may include, but are not limited to: domestic, lawn and garden, storage, and dust abatement.

3. Emergency Fire Suppression. The use of water for emergency fire suppression benefits the public, and is necessary for the purposes of the National Bison Range. The United States may, as part of its reserved water right, divert or withdraw water for fire suppression on National Bison Range lands as needed and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be considered an exercise of the United States' water rights for Consumptive Use.

4. Period of Use. The period of use of the United States' federal reserved water rights quantified in the Compact shall be from January 1 to December 31 of each year.

5. Priority Date. The priority date for the federal reserved water rights set forth in this Compact is May 23, 1908.

ARTICLE IV - IMPLEMENTATION OF COMPACT

A. Abstracts. Concurrent with this Compact, the Parties have prepared Abstracts, copies of which are attached as Appendices 3, 4, and 5 to this Compact, which specifically identify all of the United States' use of water for the National Bison Range described in this Compact and quantified in accordance with this Compact. These abstracts specifically do not include that use of water that is the subject of water right claim number 76L 187042 00, which claim the FWS and the State agree that the FWS shall retain (unless it shall choose voluntarily to withdraw or abandon it in the future) and have adjudicated by the Montana Water Court as a water right Arising Under State Law subject to the terms, conditions and procedures of the Montana Water Use Act, Title 85, Chapter 2, MCA, and the Montana general water rights adjudication. The Parties prepared the Abstracts to comply with the requirements for a final decree as set forth in state law, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstracts are subject to the terms and conditions of this Compact. In the event of a discrepancy between a right listed in an Abstract and that same right as quantified in accordance with Articles III and IV of this Compact, the Parties intend that the quantification in accordance with Articles III and IV of this Compact shall be reflected in a final decree.

B. Enforcement of Water Right.

1. The United States, the State, a holder of a water right Arising Under State Law or a holder of a right to use any portion of the Tribal Water Right, may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' water rights described by this Compact, and a holder of a water right Arising Under State Law or a holder of a right to use any portion of a Tribal Water Right. Resolution of the controversy shall be governed by the terms of this Compact where applicable, or to the extent not applicable, by applicable state, federal and tribal law.

2. The United States agrees that a water commissioner appointed by a state or federal court of competent jurisdiction, or other official authorized by law, may enter the National Bison

Range for the purpose of data collection, including the collection of information necessary for water distribution on or off the National Bison Range, and to inspect structures for the diversion and measurement of water described in this Compact for Consumptive Use. The terms of entry shall be as specified in an order of a court of competent jurisdiction or other entity authorized by law to prescribe such terms of entry.

3. So long as the Department remains the administrative entity responsible for the water rights quantified in this Compact, the Department may enter the National Bison Range at a reasonable hour of the day, for the purposes of data collection on water diversion and stream flow or inspection of devices maintained by the United States pursuant to this Compact. The Department shall notify the United States by certified mail, telephone, e-mail or in person, at least 24 hours prior to entry. If some other body becomes responsible for the administration of the National Bison Range water rights, representatives of that entity may enter the National Bison Range on the same terms and conditions set forth above in this subsection.

4. So long as the Department remains the administrative entity responsible for the water rights quantified in this Compact, the United States may request an investigation by the Department of a diversion located on a stream for which a water right is described in this Compact. The Department may investigate. If an investigation occurs, the United States may accompany the Department. If some other body becomes responsible for the administration of the National Bison Range water rights, the United States may request an investigation by that entity in the same manner and on the same terms and conditions set forth above in this subsection.

5. The United States shall maintain structures, including wellhead equipment and casing, for the diversion of water authorized for Consumptive Use by this Compact. The United States shall maintain any devices it deems necessary for enforcement of its water right for natural flow described in this Compact.

C. Use of Federal Reserved Water Rights.

1. Federal Reserved Water Rights. The reserved rights of the United States described in this agreement are federal water rights. Nonuse of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment or forfeiture of those rights. The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the National Bison Range.

2. Development of Future Uses. The United States, without prior approval of the Department, or any other administrative entity with regulatory authority over the water rights of the National Bison Range, may develop a future use after the Effective Date of this Compact as described in Article III.B.2.(b), provided that:

(a) the purpose of use is for the use authorized under Article III.B.2.(a);
(b) the total quantity of water shall not exceed the amount set forth in Article III.B.2.;
(c) the source of supply shall be restricted as set forth in Article III; and
(d) the use shall not adversely affect a senior water right Arising Under State Law.

D. Change in Use of Federal Reserved Water Rights.

1. Nonconsumptive Uses. Water rights specified in this Compact for natural flow or other Nonconsumptive Uses shall not be subject to Change in Use, provided that the emergency use of water for fire suppression as provided for in Article III.B.3 shall not be deemed a Change in Use or violation of a water right for natural flow.

2. Consumptive Uses. The United States may make a Change in Use of its Consumptive Use water rights described in Article III of this Compact provided that:

(a) the Change in Use shall be in fulfillment of the purposes of the National Bison Range;
(b) the total Consumptive Use shall not exceed the amount described in this Compact;
(c) the Change in Use shall not adversely affect any water right Arising Under State Law; and
(d) with the exception of the provisions governing a change in the purpose for which the water right is used, the United States, in making the change, shall comply with the provisions of the Montana Water Use Act, Title 85, chapter 2, MCA, applicable to change in appropriation rights at the time of the change.

3. Emergency Fire Suppression. The United States' federal reserved water right to divert or withdraw water for emergency fire suppression as described in Article III.B.3 shall not be changed to any other use.

E. Reporting Requirements. The United States shall provide a report to the Department and the Tribes on an annual basis, or on a periodic basis agreed to by the Parties and the Tribes, containing specific information on:

1. the development of new uses as described in Article III.B.2.(b);
2. changes in use as described in Article IV.D; and
3. the source of supply, the dates of use, and the estimated amount of water used for emergency fire suppression as described in Article III.B.3.

ARTICLE V - GENERAL PROVISIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights. The relationship between the water rights of the United States described in this Compact and any rights to water of any Indian tribe, or any federally derived water right of an individual, or of the United States on behalf of such tribe or individual, shall be determined by the rule of priority. The Parties agree that the water rights described in this Compact are junior to any rights to water of any Indian tribe, or any federally derived water right of an individual, or of the United States on behalf of such tribe or individual, currently quantified or as may be quantified after the Effective Date of this Compact and with a priority date before the Effective Date of this Compact, including aboriginal rights, if any, in the basins affected.

2. Nothing in the Compact may be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the FWS at the National Bison Range.

3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the water rights of any Indian tribe or tribal member.

4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian tribe regarding its boundaries or property interests in the State of Montana.

B. State Water Rights. Nothing in this Compact may limit the authority of the State, including the authority of a water commissioner authorized by state law, to administer all current and future water rights Arising Under State Law within and upstream of the National Bison Range, provided that in administration of those water rights in which the United States has an interest, such authority is limited to that granted under federal law, and provided that any scheme of comprehensive administration of all water rights located within the exterior boundaries of the Flathead Indian Reservation (which include the water rights recognized in this Compact) that is negotiated and approved in a water rights settlement among the State, the CSKT and the United States shall supersede any administrative provisions in this Compact the conflict with a State-CSKT water rights settlement.

C. General Disclaimers. Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State, or the United States and any other state;
2. as a waiver by the United States of its right under state law to raise objections in state court to individual water rights claimed pursuant to the Montana Water Use Act, Title 85, MCA, in the basins affected by this Compact; or any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the Montana Water Use Act, Title 85, MCA, in the basins affected by this Compact;
3. as a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;
4. to determine the relative rights inter sese of Persons using water under the authority of state or tribal law, or to limit the rights of the Parties or any other Person to litigate any issues or questions not resolved by this Compact;
5. to authorize the taking of a water right that is vested under state or federal law;
6. to create or deny substantive rights through headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of this Compact;

8. to affect or determine the applicability of any state or federal law, including, without limitation, environmental and public safety laws, on activities of the FWS;

9. to affect the right of the State to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs, pursuant to a ruling by a State or federal court of competent jurisdiction or Act of Congress;

10. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with regard to the water rights of the United States for the National Bison Range, and does not affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact;

11. to prevent the United States from constructing or modifying an outlet to an impoundment at the National Bison Range in compliance with all applicable laws;

12. to prevent the United States from seeking a permit to appropriate water under applicable State or other law.

D. Reservation of Rights. The Parties expressly reserve all rights not granted, described or relinquished in this Compact.

E. Severability. The provisions of this Compact are not severable.

F. Multiple Originals. This Compact is executed in triplicate. Each of the three Compacts bearing original signatures shall be deemed an original.

G. Notice. Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as the Director may designate in writing; and

United States: Upon the Secretary of the Interior and such other officials as the Secretary may designate in writing.

CSKT: Upon the Tribal Chairman of the CSKT and such other officials as the Chairman may designate in writing.

ARTICLE VI - FINALITY

Binding Effect.

1. The Effective Date of this Compact is the date of the ratification of this Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on the Parties.

2. Following the Effective Date, this Compact shall not be modified without the consent of both Parties. Either Party may seek enforcement of this Compact in a court of competent jurisdiction.

3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all Persons bound by the final order of the court.

4. If an objection to this Compact is sustained pursuant to 85-2-703, MCA, and 85-2-702(3), MCA, this Compact shall be voidable by action of and without prejudice to either Party.

B. Filing Compact with State Court. Subject to the following stipulations and within one hundred eighty (180) days of the Effective Date of this Compact, the Parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. 666, for approval in accordance with state law and for the incorporation of the water rights described in this Compact into a decree or decrees entered therein. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

C. Dismissal of Filed Claims. At the time the state courts approve the water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all water right claims specified in Appendix 6 of this

Compact for the National Bison Range. If this Compact is not approved or a federal reserved water right described herein is not confirmed, any corresponding state law-based claim filed by the FWS for use on the National Bison Range shall not be dismissed.

D. Settlement of Claims. The Parties intend that the water rights described in this Compact are in full and final settlement of the federal reserved water right claims for the National Bison Range described in this Compact and administered by the FWS on the Effective Date of this Compact. On the Effective Date of this Compact, the United States hereby and in full settlement of any and all claims to federal reserved water rights by the United States, including all claims that the FWS filed or could have filed as part of the ongoing statewide adjudication process, relinquishes forever all claims to federal reserved water rights within the State of Montana for the National Bison Range. The State agrees to recognize the water rights described and quantified herein and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the State. Nothing in this Compact precludes the FWS from filing for future water use permits under Montana state law.

E. Continuation of Negotiations. The Parties have not finalized agreement on quantification of the water rights for the Charles M. Russell and UL Bend National Wildlife Refuges and UL Bend Wilderness Area, prior to the Effective Date of this Compact. The Parties agree to continue to pursue, in good faith, negotiations toward compacts for the quantification of water rights for these areas. In the event the Parties are unable to agree on quantification, the United States retains its right to have the quantity of any reserved water right for these areas adjudicated in a state or federal court of competent jurisdiction.

F. Defense of Compact. The Parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the ____ day of ________, 2009.

History: En. Sec. 1, Ch. 280, L. 2009.

Part 17
United States of America, Fish and Wildlife Service, Charles M. Russell National Wildlife Refuge-Montana Compact

85-20-1701. United States of America, fish and wildlife service, Charles M. Russell national wildlife refuge-Montana compact ratified. This compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims to federal reserved water rights for the Charles M. Russell National Wildlife Refuge administered by the U.S. Fish and Wildlife Service within the State of Montana.

ARTICLE I
RECITALS

WHEREAS, the State of Montana, in 1979 pursuant to Title 85, Chapter 2 of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, 85-2-228, MCA, provides that a federal reserved water right with a priority date of July 1, 1973, or later be subject to the same process and adjudication as a federal reserved water right with a priority date before July 1, 1973;

WHEREAS, 85-2-703 and 85-2-228(3), MCA, provide that the Montana Reserved Water Rights Compact Commission may negotiate settlement of claims by the federal government to non-Indian reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the Charles M. Russell National Wildlife Refuge as articulated in Executive Order 7509 of December 11, 1936;

WHEREAS, the Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-517 (1968);

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this compact on behalf of the United States Department of Interior pursuant to 43 U.S.C. 1457 (1986, Supp. 1992);

NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE II
DEFINITIONS

For purposes of this compact only, the following definitions shall apply:

(1) "Abstract" means copies of the documents collectively entitled "Abstracts of U.S. Fish and Wildlife Service Water Rights for the Charles M. Russell National Wildlife Refuge" referenced in this compact as Appendices 1-3.

(2) "Acre-foot" or "Acre-feet" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet of water.

(3) "Charles M. Russell National Wildlife Refuge" means the federal reservation of land that was designated under the Act of June 25, 1910, ch. 421, 36 Stat. 847, as amended by the Act of August 24, 1912, ch. 369, 37 Stat. 497.

(4) "Coextensive" means equal or coincident in space, time or scope. As applied to this compact, "Coextensive" rights to instream flow are non-additive water rights that constitute a usufructuary interest held by two or more parties with each party being subject to the same limits on quantity of water regardless of whether one or both parties are exercising the right.

(5) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

(6) "Effective Date" means the date on which the compact is given ratification by the Montana Legislature, written approval by the United States Department of the Interior, and written approval by the United States Department of Justice, whichever occurs later.

(7) "Groundwater" means any water that is beneath the ground surface.

(8) "Instream Flow" means the water that the Parties agree must remain in the stream for non-consumptive uses to protect and maintain water flow and Wildlife Habitat throughout the Refuge for the purposes of the federal reservation.

(9) "Non-Consumptive Use" means a beneficial use of water that does not cause a reduction in the source of supply or result in a reduction in the quantity or quality of water and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(10) "Order" means Executive Order 7509, withdrawing from the public domain the Fort Peck Game Range, signed December 11, 1936.

(11) "Parties" means the State of Montana and the United States.

(12) "Recognized Under State Law" when referring to a water right or use means a water right or use protected by state law, but does not include state recognition of a federal or tribal reserved water right arising under federal law.

(13) "Refuge" means the Charles M. Russell National Wildlife Refuge.

(14) "Reserved Right" means collectively the United States' water rights for stock, wildlife, and Wildlife Habitat within Refuge as described herein.

(15) "Restricted Reach" means the portion of stream reach subject to the on-stream impoundment limitation described in Articles III.E. and IV.C. and depicted in Appendix 5 of this compact.

(16) "Stacked" means a series of impoundments on the same stream placed in proximity to one another such that water impounded by a down-stream dam reaches an elevation less than or equal to five feet below the elevation of the base of the embankment of the next upstream dam.

(17) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, "state" means the Director of the Montana Department of Natural Resources and Conservation or the Director's designee.

(18) "United States" means the federal government and all officers, agencies, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of the Interior or the Secretary's designee.

(19) "Wildlife Habitat" means a combination of food, water, shelter, and space that sustains wildlife and includes, but is not limited to, riparian areas and the stream flows that sustain them. This definition may not be construed to increase the quantity of the water rights set forth in Article III of this compact.

ARTICLE III
WATER RIGHT

The Parties agree that the following water rights are in settlement of the reserved water rights claims of the United States for the Refuge. All water rights described in this Article are subject to Article IV of this compact as well as any specific additional conditions set forth below.

A. Priority date. The Reserved Right for stock, wildlife, and Wildlife Habitat uses within the Refuge described herein has a priority date of December 11, 1936. The United States agrees to subordinate its 1936 Reserved Right to water rights Recognized Under State Law existing on the Effective Date of this compact. Accordingly, any water right Recognized Under State Law with a priority date prior to the Effective Date of this compact is functionally senior in priority to any component of the Reserved Right and is not subject to a call for enforcement or administration by the United States in the exercise of the Reserved Right. The final decree for the United States' Reserved Right must include the above prohibition on call.

B. Quantified instream rights. The United States holds water rights in the following named streams from the point furthest upstream where the Refuge boundary crosses the mainstem stream channel to its confluence with Fort Peck Lake or the Missouri River. The water right is in the amount of one (1) or one-half (1/2) cubic feet per second (cfs) for instream use for the purposes of stock, wildlife, and Wildlife Habitat as set forth in Table 1 and the Abstracts attached to this compact as Appendix 1, and as depicted in Appendix 4. The period of use is from March 1 to June 30. The United States may exercise its quantified instream rights during the period of use provided by this Compact if water is available.

Table 1

Stream Name	Amount (cfs)	Upstream Limit	Downstream Limit
Alkali Creek	0.5	NWSW Sec.27 19N29E	SESW Sec.36 19N29E
Antelope Creek	0.5	NWNE Sec.3 22N23E	SESE Sec.21 22N23E
Armells Creek	1.0	NWSW Sec.18 21N23E	NWSW Sec.32 22N24E
Ash Creek	0.5	NWNW Sec.28 22N42E	SESW Sec.27 22N42E
Bear Creek	0.5	NENE Sec.15 25N42E	SWSE Sec.10 25N42E
Beauchamp Creek	0.5	NWNE Sec.16 22N28E	SESE Sec.35 22N28E
Big Coulee Creek	0.5	NWSW Sec.16 21N33E	SWSW Sec.12 21N33E
Big Dry Creek	1.0	SWSW Sec.26 20N42E	NESW Sec.12 20N42E
Billy Creek	0.5	SESE Sec.33 22N34E	NWNE Sec.22 22N34E
Box Creek, North Fork	0.5	SWSW Sec.18 23N42E	NENE Sec.19 23N42E
Box Creek, South Fork	0.5	SWNW Sec.19 23N42E	SENE Sec.19 23N42E
Bridge Coulee	0.5	SWNW Sec.1 20N42E	NENE Sec.12 20N42E
Cabin Coulee	0.5	SESW Sec.21 23N35E	SWSE Sec.5 22N36E
Carroll Coulee	0.5	SWNW Sec.31 21N26E	SENE Sec.22 21N26E
Cart Trail Coulee	0.5	NWNW Sec.35 23N33E	NENW Sec.1 22N33E
Cat Creek	0.5	NWSW Sec.29 23N42E	SWSW Sec.28 23N42E
Cattle Creek	0.5	SWSE Sec.15 22N39E	SWSE Sec.10 22N39E
CK Creek	0.5	NWNE Sec.1 22N26E	SESE Sec.12 21N27E
Crooked Creek (Garfield County)	0.5	SESE Sec.19 22N39E	NENE Sec.19 22N39E
Sacagawea River/ Crooked Creek	0.5	SWSW Sec.27 20N29E	SWNW Sec.36 20N29E
Dawson Creek	0.5	NWSW Sec.6 23N42E	SWSE Sec.6 23N42E
Devils Creek	0.5	NENE Sec.16 21N32E	SENW Sec.5 21N32E
Doney Coulee	0.5	NWNE Sec.30 23N34E	SESW Sec.29 23N34E
Duck Creek	0.5	NWNW Sec.1 23N37E	NWSE Sec.1 23N37E
Duval Creek	0.5	NENW Sec.5 22N24E	NWSE Sec.34 22N24E
Fifth Coulee	0.5	SWNW Sec.33 25N39E	SESE Sec.2 24N39E
Fourchette Creek	1.0	NWNW Sec.15 22N30E	NWSE Sec.8 22N31E
Germaine Coulee	0.5	SESE Sec.22 19N30E	SWSW Sec.16 19N30E
Gilbert Creek	0.5	SWSE Sec.17 22N40E	NESE Sec.4 22N40E

Hawley Creek	0.5	NENW Sec.35 22N29E	NENE Sec.2 21N28E
Hell Creek	0.5	SESE Sec.16 21N37E	NWNW Sec.13 21N37E
Hilliard Coulee	0.5	NENE Sec.20 26N42E	NWSW Sec.17 26N42E
Kill Woman Creek	0.5	NENE Sec.3 22N32E	SESE Sec.10 22N32E
King Coulee	0.5	NWNW Sec.6 23N37E	SESW Sec.9 23N37E
Lone Tree Creek	0.5	NWSW Sec.34 22N42E	NESW Sec.34 22N42E
Lost Creek	0.5	SWSE Sec.36 21N31E	NWNW Sec.33 21N31E
Middle Eighth Coulee	0.5	NENE Sec.28 24N38E	SWNE Sec.35 24N38E
Nelson Creek	0.5	SESW Sec.26 21N43E	NENW Sec.27 21N43E
Nichols Coulee	0.5	SWSW Sec.7 22N27E	SESE Sec.10 21N27E
North Fork Rock Creek	0.5	NENE Sec.21 23N43E	SWSE Sec.17 23N43E
Norville Creek	0.5	NWNW Sec.36 24N41E	NWNW Sec.31 24N42E
Renick Coulee	0.5	SESE Sec.24 23N40E	NENE Sec.23 23N40E
Ried Coulee	0.5	SWSW Sec.18 21N38E	NWNE Sec.13 21N37E
Rock Creek	1.0	NENE Sec.6 22N25E	NWNE Sec.11 21N25E
Sand Arroyo	0.5	NWNE Sec.20 24N43E	NESW Sec.20 24N43E
Sand Creek	0.5	SWSW Sec.16 21N24E	NENE Sec.9 21N25E
Sandburn Coulee	0.5	SESE Sec.1 19N30E	SESE Sec.25 20N30E
Seven Blackfoot Creek	0.5	SWSE Sec.13 21N33E	NENW Sec.13 21N33E
Sevenmile Creek	0.5	NENW Sec.6 22N26E	SESE Sec.7 21N27E
Seventh Coulee	0.5	NWSW Sec.18 24N39E	SWNW Sec.20 24N39E
Sherman Coulee	0.5	NESE Sec.33 19N30E	NENE Sec.30 19N30E
Siparyann Creek	1.0	NWNW Sec.2 22N24E	SESE Sec.32 22N25E
Sixth Coulee	0.5	NWNW Sec.5 24N39E	SWNW Sec.14 24N39E
Snap Creek	0.5	SWSW Sec.23 21N42E	SENE Sec.26 21N42E
Snow Creek	0.5	SWSW Sec.3 21N36E	NESW Sec.2 21N36E
Soda Creek	0.5	SWNW Sec.33 21N29E	SWNW Sec.8 20N30E
South Fork Duck Creek	0.5	NWNW Sec.21 25N39E	SWNW Sec.14 25N39E
South Fork Rock Creek	0.5	SENE Sec.33 23N43E	NWNE Sec.32 23N43E
Spring Creek	0.5	NESE Sec.11 24N42E	SESE Sec.10 24N42E
Nancy Russell Creek/ Squaw Creek	0.5	SESE Sec.29 20N31E	SWNE Sec.30 20N31E
Sutherland Creek	0.5	SWNW Sec.13 23N36E	SWSW Sec.18 23N37E
Telegraph Creek*	0.5	NENW Sec.30 23N31E	SWSE Sec.31 23N31E
Timber Creek (McCone)	0.5	NENE Sec.17 20N43E	SWSE Sec.6 20N43E
Two Calf Creek	0.5	NWNW Sec.30 22N23E	NENW Sec.28 22N23E
Upper Eighth Coulee	0.5	NWSW Sec.33 24N38E	SENE Sec.4 23N38E
Valentine Creek*	0.5	NWNE Sec.10 21N30E	SENW Sec.14 22N30E
Wilder Creek	0.5	NENW Sec.12 22N25E	SWSE Sec.6 21N26E
Wyatt Coulee	0.5	NWNW Sec.22 23N34E	NESW Sec.22 23N34E

*The downstream end of the quantified reaches of Telegraph Creek and Valentine Creek end at their confluence with Fourchette Creek.

C. Instream Flow right on Musselshell River. The United States holds a water right in the Musselshell River from the point furthest upstream where the mainstem river channel enters U.S. Fish and Wildlife Service owned land within the Refuge (near the SESE of section 11, T.18N, R.29E) to its confluence with Fort Peck Lake as described in the Abstract attached to this compact as Appendix 2. The water right is in the amount of a minimum instream flow of seventy (70) cfs. The water right is for the purposes of stock, wildlife, and Wildlife Habitat and must be Coextensive with any other non-consumptive instream uses during the specified period of use. The period of use for this right is from March 1 to June 30.

D. Wells, ponds, and springs. Water rights for wells, developed springs, and ponds will be recognized and quantified as set forth in the Abstracts attached to this compact as Appendix 3.

E. Conditions to be applied to permits issued after the Effective Date of the Compact. On the Restricted Reaches set forth in Table 2 and depicted in Appendix 5, no new on-stream impoundments may be constructed after the Effective Date of this Compact, except as provided by Article IV.C.

Table 2

Name of Group	Name at Endpoint	Upper or Lower	Quarter Quarter	Section	Township Range
Armells Creek	Armells Creek	Upper	NENE	12	20N21E
	Armells Creek	Lower	SWSW	32	22N24E
	Fargo Coulee	Upper	NESE	13	20N22E
	UT of Fargo Coulee	Upper	SENW	33	21N23E
	UT of Fargo Coulee	Upper	NENW	1	20N22E
Ash Creek	Ash Creek	Upper	SWSW	11	22N41E
	Ash Creek	Lower	SESW	27	22N42E
Bear Creek	Bear Creek	Upper	NENE	15	25N42E
	Bear Creek	Lower	SWSE	10	25N42E
Beauchamp Creek	Beauchamp Creek	Upper	NESW	14	24N26E
	Beauchamp Creek	Lower	SESE	35	22N28E
Billy Creek	Billy Creek	Upper	SENE	17	21N34E
	Billy Creek	Lower	NWNE	22	22N34E
Bobcat Creek	Bobcat Creek	Upper	NENE	29	25N42E
	UT of Bobcat Creek	Upper	NESW	29	25N42E
	Bobcat Creek	Lower	NWNW	30	25N41E
Box Creek, North Fork	Box Creek, North Fork	Upper	SENE	4	23N41E
	UT of Box Creek, North Fork	Upper	NESW	9	23N41E
	Box Creek, North Fork	Lower	NENE	19	23N42E
Box Creek, South Fork	Box Creek, South Fork	Upper	NENW	22	23N41E
	Box Creek, South Fork	Lower	SENE	19	23N42E
Box Elder Creek	Box Elder Creek	Upper	NESW	29	23N32E
	Box Elder Creek	Lower	SENE	30	23N31E
Bridge Coulee	Bridge Coulee	Upper	SESW	33	21N42E
	Bridge Coulee	Lower	NENE	12	20N42E
	Carpenter Creek	Upper	NWNW	15	23N35E
Carroll Coulee	Carroll Coulee	Upper	SWNW	11	20N25E
	UT of Carroll Coulee	Upper	SESE	27	21N25E
	UT of Carroll Coulee	Upper	SWSW	1	20N25E
	UT of Carroll Coulee	Upper	NWNW	3	20N25E
	Carroll Coulee	Lower	SENE	22	21N26E
Cat Creek	Cat Creek	Upper	NWNW	34	23N41E
	Cat Creek	Lower	SWSW	28	23N42E
CK Creek	CK Creek	Upper	NESE	22	24N25E
	CK Creek	Lower	SESE	12	21N27E
	Cottonwood Creek	Upper	NWNW	36	24N24E
Crooked Creek (Garfield County)	Crooked Creek (Garfield County)	Upper	NWNE	4	21N39E
	Crooked Creek (Garfield County)	Lower	NENE	19	22N39E
Crooked Creek/Sacagawea River	Crooked Creek/Sacagawea River	Upper	SWNW	30	20N28E
	Crooked Creek/Sacagawea River	Lower	SENE	35	20N29E
Dawson Creek	Dawson Creek	Upper	NENE	3	23N41E
	Dawson Creek	Lower	SWSE	6	23N42E
Deadman Coulee	Deadman Coulee	Upper	SESE	20	21N32E
	Deadman Coulee	Lower	SWNE	22	21N31E
Devils Creek	Devils Creek	Upper	SESW	30	21N33E
	Devils Creek	Lower	SENW	5	21N32E
Doney Coulee	Doney Coulee	Upper	SESW	13	23N33E
	Doney Coulee	Lower	SESW	29	23N34E
Duval Creek	Duval Creek	Upper	NENW	5	22N24E
	Duval Creek	Lower	NWSE	34	22N24E
East Fork Crooked Creek	East Fork Crooked Creek	Upper	NWNW	25	22N39E
	East Fork Crooked Creek	Lower	SWSE	10	22N39E
Fifth Coulee	Fifth Coulee	Upper	NWNW	32	25N39E
	Fifth Coulee	Lower	SESE	2	24N39E
Fourchette Creek	Fourchette Creek	Upper	NESE	29	23N29E
	Fourchette Creek	Lower	NWSW	5	22N31E
Germaine Coulee	Germaine Coulee	Upper	SESE	24	19N30E
	Germaine Coulee	Lower	SWSW	16	19N30E

Gilbert Creek	Gilbert Creek	Upper	SENE	29	22N40E
	Gilbert Creek	Lower	NESE	4	22N40E
Hell Creek	Hell Creek	Upper	NWSE	27	21N36E
	Hell Creek	Lower	NWNW	13	21N37E
Hell Hole Coulee	Hell Hole Coulee	Upper	NENE	19	23N34E
	Hell Hole Coulee	Lower	NENE	28	23N34E
	Karsten Coulee	Upper	NWNW	12	22N28E
Kill Woman Creek	Kill Woman Creek	Upper	NESE	27	23N32E
	Kill Woman Creek	Lower	SESE	10	22N32E
King Coulee	King Coulee	Upper	SWNE	36	24N36E
	King Coulee	Lower	SESW	9	23N37E
	Little Cottonwood Creek	Upper	NWNE	9	23N24E
Lone Tree Creek	Lone Tree Creek	Upper	NENW	27	22N41E
	Lone Tree Creek	Lower	NESW	34	22N42E
Lost Creek (east Garfield Co.)	Lost Creek (east Garfield Co.)	Upper	SWNE	8	22N42E
	Lost Creek (east Garfield Co.)	Lower	SWSW	3	22N42E
Lost Creek (west Garfield Co.)	Lost Creek (west Garfield Co.)	Upper	SWSW	32	21N32E
	Lost Creek (west Garfield Co.)	Lower	SENW	33	21N31E
Middle Eighth Coulee	Middle Eighth Coulee	Upper	NENW	21	24N38E
	Middle Eighth Coulee	Lower	SWNE	35	24N38E
North Fork Rock Creek	North Fork Rock Creek	Upper	NWNW	36	24N43E
	North Fork Rock Creek	Lower	NWNE	20	23N43E
Norville Creek	Norville Creek	Upper	NESE	28	24N41E
	UT of Norville Creek	Upper	SESE	21	24N41E
	Norville Creek	Lower	NWNW	31	24N42E
	Plum Creek	Upper	SENW	3	23N35E
Renick Coulee	Renick Coulee	Upper	NWNW	32	23N41E
	Renick Coulee	Lower	NWNE	23	23N40E
Ried Coulee	Ried Coulee	Upper	NESE	32	21N38E
	Ried Coulee	Lower	NENE	13	21N37E
Rock Creek	Rock Creek	Upper	SWNE	30	24N25E
	Rock Creek	Lower	NWNE	11	21N25E
Sage Creek	Sage Creek	Upper	NENE	8	23N41E
	Sage Creek	Lower	SWSW	31	24N41E
Sand Creek	Sand Creek	Upper	NENE	1	20N23E
	UT of Sand Creek	Upper	SWSE	35	21N24E
	UT of Sand Creek	Upper	SWSE	24	21N23E
	UT of Sand Creek	Upper	SWSE	33	21N24E
	UT of Sand Creek	Upper	SWSW	26	21N23E
	UT of Sand Creek	Upper	SWSE	14	21N23E
	Sand Creek	Lower	NENE	9	21N25E
Seven Blackfoot Creek	Seven Blackfoot Creek	Upper	SWNW	23	20N34E
	Seven Blackfoot Creek	Lower	NENW	13	21N33E
Sevenmile Creek	Sevenmile Creek	Upper	SESW	14	23N25E
	Sevenmile Creek	Lower	SESE	7	21N27E
Sherman Coulee	Sherman Coulee	Upper	NWSW	1	18N30E
	Sherman Coulee	Lower	NENE	30	19N30E
Short Creek	Short Creek	Upper	SENE	10	21N42E
	Short Creek	Lower	SESE	11	21N42E
Siparyann Creek	Siparyann Creek	Upper	NENE	5	23N24E
	Siparyann Creek	Lower	SESE	32	22N25E
Sixth Coulee	Sixth Coulee	Upper	SWNW	31	25N39E
	Sixth Coulee	Lower	SWNW	14	24N39E
Snap Creek	Snap Creek	Upper	NENE	17	21N42E
	Snap Creek	Lower	NENE	26	21N42E
Snow Creek	Snow Creek	Upper	NWSW	14	21N35E
	Snow Creek	Lower	NESW	2	21N36E
Soda Creek	UT of Soda Creek	Upper	SWNE	30	21N29E
	UT of Soda Creek	Upper	NESW	31	21N29E
	UT of Soda Creek	Upper	NWNE	29	21N29E
	UT of Soda Creek	Upper	SESW	31	21N29E
	UT of Soda Creek	Upper	NENW	36	21N28E

	Soda Creek	Lower	SWNW	8	20N30E
Spring Creek	Spring Creek	Upper	NWNE	12	24N42E
	UT of Spring Creek	Upper	NESW	33	25N42E
	UT of Spring Creek	Upper	NENW	3	24N42E
	UT of Spring Creek	Upper	NENE	14	24N42E
	UT of Spring Creek	Upper	NWNW	34	25N42E
	Spring Creek	Lower	SESE	10	24N42E
Stole Creek	Stole Creek	Upper	SWSE	4	24N42E
	Stole Creek	Lower	SESE	9	24N42E
Sutherland Creek	Sutherland Creek	Upper	SWSW	30	24N36E
	UT of Sutherland Creek	Upper	NWNE	34	24N36E
	Sutherland Creek	Lower	SWSW	18	23N37E
Telegraph Creek	Telegraph Creek	Upper	SESE	25	24N31E
	Telegraph Creek	Lower	NWNE	6	22N31E
Two Calf Creek	Two Calf Creek	Upper	NENE	22	22N21E
	Two Calf Creek	Lower	NWNE	28	22N23E
UT of Musselshell River	UT of Musselshell River	Upper	NWSW	17	19N29E
	UT of Musselshell River	Lower	SWNW	30	19N30E
UT1 of Fort Peck Lake	UT1 of Fort Peck Lake	Upper	NWNE	14	22N40E
	UT1 of Fort Peck Lake	Lower	NENW	2	22N40E
UT2 of Fort Peck Lake	UT2 of Fort Peck Lake	Upper	NENE	17	24N41E
	UT2 of Fort Peck Lake	Upper	SWNW	21	24N41E
	UT2 of Fort Peck Lake	Upper	NENE	21	24N41E
	UT2 of Fort Peck Lake	Lower	SWNW	15	24N41E
UT3 of Fort Peck Lake	UT3 of Fort Peck Lake	Upper	NWSW	35	26N42E
	UT of UT3 of Fort Peck Lake	Upper	SENW	34	26N42E
	UT3 of Fort Peck Lake	Lower	SENW	4	25N42E
UT4 of Fort Peck Lake	UT4 of Fort Peck Lake	Upper	NENE	20	25N42E
	UT4 of Fort Peck Lake	Lower	SENE	8	23N42E
UT5 of Fort Peck Lake	UT5 of Fort Peck Lake	Upper	SENE	21	25N42E
	UT of UT5 of Fort Peck Lake	Upper	SENW	22	25N42E
	UT5 of Fort Peck Lake	Lower	SESW	10	25N42E
UT6 of Fort Peck Lake	UT6 of Fort Peck Lake	Upper	NWNE	19	25N41E
	UT6 of Fort Peck Lake	Lower	SESE	24	25N41E
UT7 of Fort Peck Lake	UT7 of Fort Peck Lake	Upper	SESE	14	24N42E
	UT7 of Fort Peck Lake	Lower	NWNE	15	24N42E
UT8 of Fort Peck Lake	UT8 of Fort Peck Lake	Upper	NWSE	13	24N42E
	UT8 of Fort Peck Lake	Lower	SENW	24	24N42E
West Fork Sand Arroyo	West Fork Sand Arroyo	Upper	SENE	9	24N43E
	West Fork Sand Arroyo	Lower	NESW	20	24N43E
Wyatt Coulee	Wyatt Coulee	Upper	SWNE	12	23N33E
	Wyatt Coulee	Lower	NESW	22	23N34E

ARTICLE IV
COMPACT IMPLEMENTATION

A. Quantified reaches. Flows of designated quantified reaches set forth in Table 1 and Appendix 1 that are not already appropriated as of the Effective Date of this compact will be available for future development, subject to the Reserved Right and applicable permit conditions described herein. The Department may approve new uses after the Effective Date of this compact, but the Department shall condition any permit or approval of new uses to provide that such uses may not cause the quantified reaches to fall below the minimum flows set forth in Table 1 and Appendix 1 during the time period from March 1 to June 30. Appropriations occurring after the Effective Date of this compact will be subject to call by the United States in the exercise of the Reserved Right at any time streamflows are available but fall below the levels set forth in Table 1 and Appendix 1 of this compact, as measured where each quantified stream enters Fort Peck Lake or the Missouri River, or at the closest upstream confluence for those streams that intersect another stream before reaching Fort Peck Lake or the Missouri River, with a proper device for measurement of the waters flowing in the quantified reach.

B. Musselshell River. Musselshell River flows that are not already appropriated as of the Effective Date of this compact will be available for future development subject to the Reserved

Right and applicable permit conditions described herein. The Department may approve new uses after the Effective Date of this compact but shall condition any permit or approval of new uses to provide that such uses may not cause the flow of the Musselshell River to fall below seventy (70) cfs where the mainstem river channel enters U.S. Fish and Wildlife Service owned land within the Refuge during the period from March 1 to June 30. Appropriations occurring after the Effective Date of this compact will be subject to a call by the United States in the exercise of the Reserved Right at any time streamflow falls below 70 cfs for five (5) consecutive days.

C. Conditions to be applied to permits issued after the Effective Date of the compact. Impoundments of less than the capacity and appropriation limits excepted from permitting under 85-2-306, MCA, may be constructed on the stream reaches identified in Table 2 and Appendix 5. These impoundments may not be Stacked to achieve a volume greater than the statutory exception. The Department may permit no new on-stream impoundments that do not meet the permit exception requirements of 85-2-306, MCA, on the Restricted Reaches identified in Table 2 and Appendix 5.

1. Reclamation, repair, or rehabilitation of an existing impoundment may not be considered a new impoundment, except that reclamation, repair, or rehabilitation cannot cause the impoundment to exceed the storage volume listed on the statement of claim.

2. Off-stream impoundments larger than the capacity and appropriation limits excepted from permitting by 85-2-306, MCA, may be constructed and filled in accordance with state permitting requirements from a diversion works located on the stream reaches identified in Table 2 and Appendix 5; and

3. On-stream impoundments larger than the capacity and appropriation limits excepted from permitting by 85-2-306, MCA, may be constructed and filled in accordance with state permitting requirements on the streams identified in Table 2 and Appendix 5 upstream of the designated Restricted Reach.

D. Uses exempted from curtailment by the United States' exercise of the Reserved Right during times of shortage. During times when there is insufficient water to satisfy the Reserved Right, and curtailment of junior water rights is otherwise contemplated under Article III, the following water rights will not be subject to call or curtailment for the benefit of the Reserved Right:

1. Non-Consumptive Uses located upstream of the instream reaches identified in Table I and Appendix 1.

2. Groundwater uses of thirty-five (35) gallons per minute (gpm) or less not to exceed ten (10) AF per year.

3. Stockwater impoundments of less than fifteen (15) AF capacity and total appropriation less than thirty (30) AF per year.

4. Temporary emergency appropriations under 85-2-113(3), MCA.

5. An application submitted pursuant to 85-20-1401, MCA, Article VI.

6. An application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:

a. Remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

b. Aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251-1387; or

c. Remedial actions taken pursuant to Title 75, chapter 10, part 7.

E. Action for enforcement of provisions of Article III. The United States may file an original action in a court of competent jurisdiction to enforce the provisions of Article III at any time. The United States cannot be required to exhaust any administrative remedies in order to enforce Article III of this compact.

ARTICLE V
GENERAL PROVISIONS

A. The Parties recognize that the U.S. Fish and Wildlife Service has an interest in maintaining water flow and wildlife habitat throughout the Refuge.

B. No effect on tribal rights or other federal reserved water rights.

1. The relationship between the water rights of the U.S. Fish and Wildlife Service described herein and any rights to water of an Indian Tribe in Montana, or of any federally derived water right of an individual, or of the United States on behalf of a Tribe or individual shall be determined by the rule of priority.

2. Nothing in this compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any Indian Tribes and Tribal members in the State of Montana.

3. Nothing in this compact is otherwise intended to conflict with or abrogate a right or claim of an Indian Tribe regarding boundaries or property interests in the State of Montana.

4. Nothing in this compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in the State of Montana other than those of the U.S. Fish and Wildlife Service for the Charles M. Russell National Wildlife Refuge.

C. General Disclaimers. Nothing in this Compact may be construed or interpreted:

1. As a precedent for the litigation of reserved water rights or the interpretation or administration of existing or future compacts between the United States and the State; or of the United States and any other state;

2. As a waiver by the United States of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this compact, or, except as provided in this compact, any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this compact;

3. As a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this compact;

4. To establish a precedent for other agreements between the State and the United States or an Indian tribe;

5. To determine the relative rights, inter se, of persons using water under the authority of state law or to limit the rights of the parties or a person to litigate an issue not resolved by this compact;

6. To authorize the taking of a water right that is vested under state or federal law;

7. To create or deny substantive rights through headings or captions used in this compact;

8. To expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of this compact;

9. To affect or determine the applicability of any state or federal law, including, without limitation, environmental and public safety laws, on activities of the U.S. Fish and Wildlife Service;

10. To affect the right of the State to seek fees or reimbursement for costs or the right of the United States to contest the imposition of fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or an act of Congress;

11. To affect, in any manner, the entitlement to or quantification of other federal water rights. This compact is binding on the United States solely in regard to the water rights of the United States for the Charles M. Russell National Wildlife Refuge, and this compact does not affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this compact.

D. Use of water right. Non-use of all or a part of the Reserved Right may not constitute abandonment of the right. The Reserved Right need not be applied to a use deemed beneficial under state law, but must be restricted to uses necessary to fulfill the purposes outlined in the Order.

E. Coextensive with other non-consumptive instream water uses. The Reserved Right for Instream Flows for the Refuge described in this compact must be Coextensive with any other non-consumptive instream water uses, and may not be cumulative to other instream uses.

F. Appropriation pursuant to State law. Nothing in this compact may prevent the United States from seeking a water appropriation pursuant to state law for use on the reserved land within the Refuge or for use outside the boundaries of the federal reservation for which a water right is described in this compact. A water right obtained in this manner shall be Recognized Under State Law and must be administered pursuant to state law.

G. Reservation of rights. The Parties expressly reserve all rights not granted, described, or relinquished in this compact.

H. Severability. The provisions of this compact are not severable.

I. Multiple originals. This compact is executed in quintuplicate. Each of the five (5) compacts bearing original signatures must be deemed an original.

J. Notice. Unless otherwise specifically provided for in this compact, service of notice, except service in litigation, must be:

1. State. Upon the Director of the Department or its successor agency, and such other officials as the Director may designate in writing.

2. United States. Upon the Secretary of the Interior and such other officials as the Secretary may designate in writing.

ARTICLE VI
FINALITY OF COMPACT

A. Binding effect.

1. The Effective Date of this Compact is the date of the ratification of this compact by the Montana legislature, written approval by the United States Department of the Interior, and written approval by the United States Department of Justice. Once effective, all of the provisions of this compact shall be binding on:

a. The State and a person or entity of any nature whatsoever using, claiming or in any manner asserting a right under the authority of the State to the use of water; and

b. Except as otherwise provided in Article V, Section B, the United States, a person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.

2. Following the Effective Date, this compact may not be modified without the written consent of the Parties. Any attempt to unilaterally modify this compact by either Party shall render this compact voidable at the election of the other Party.

B. Settlement of claims. The Parties intend that the Reserved Right described in this compact is in full and final settlement of the reserved water right claims of the United States for the Charles M. Russell National Wildlife Refuge. Pursuant to this settlement, by which certain federal reserved water rights are expressly recognized by the State in this compact, the United States hereby and in full settlement of any and all claims filed by the United States or which could have been filed by the United States for the Refuge relinquishes forever all said claims on the Effective Date of this compact to water within the State of Montana for federal reserved water rights for the above mentioned unit. The State agrees to recognize the Reserved Right described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as any other appropriation.

C. The parties agree to defend the provisions and purposes of this compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the 11th day of May, 2015.

History: En. Sec. 1, Ch. 227, L. 2013.

Part 18
United States of America, Bureau of Land Management, Upper Missouri River Breaks National Monument-Montana Compact

85-20-1801. United States of America, Bureau of Land Management, Upper Missouri River Breaks National Monument-Montana compact ratified. This Compact is entered into by the state of Montana and the United States of America to settle for all time any and all claims to federal reserved water rights for the Upper Missouri River Breaks National Monument administered by the U.S. Bureau of Land Management within the state of Montana.

ARTICLE I
RECITALS

WHEREAS, the State of Montana, in 1979 pursuant to Title 85, chapter 2, of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, 85-2-228, MCA, provides that a federal reserved water right with a priority date of July 1, 1973, or later be subject to the same process and adjudication as a federal reserved water right with a priority date before July 1, 1973;

WHEREAS, 85-2-703 and 85-2-228(3), MCA, provide that the State may negotiate settlement of claims by the federal government to non-Indian reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the Upper Missouri River Breaks National Monument as articulated in the Proclamation of January 17, 2001;

WHEREAS, the Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-517 (1968);

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of Interior pursuant to 43 U.S.C. 1457 (1986, Supp. 1992);

NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE II
DEFINITIONS

For Purposes of this Compact only, the following definitions shall apply:

(1) "Abstract" means copies of the documents entitled "Abstract of U.S. Bureau of Land Management Water Right for the Judith River" and "Abstract of U.S. Bureau of Land Management Water Right for Arrow Creek," referenced in this Compact as Appendices 1 and 2.

(2) "Acre-foot" or "Acre-feet" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet of water.

(3) "Arrow Creek Basin" means the watershed of Arrow Creek designated as Montana Water Court Basin 41R.

(4) "BLM" means the United States Department of Interior, Bureau of Land Management or its successor.

(5) "Concurrent" means occurring or existing simultaneously or side by side. As applied to this compact, "Concurrent" rights to instream flow are non-additive water rights that constitute a usufructuary interest held by two or more parties in the same volume of water.

(6) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

(7) "Effective Date" means the date on which the Compact is given ratification by the Montana Legislature, written approval by the United States Department of the Interior, and written approval by the United States Department of Justice, whichever occurs later.

(8) "Groundwater" means any water that is beneath the ground surface.

(9) "Instream Flow" means the water that the parties agree shall remain in the stream in satisfaction of the United States' reserved water right for the purposes of the federal reservation.

(10) "Judith River Basin" means the watershed of the Judith River designated as Montana Water Court Basin 41S.

(11) "Monument" means the "Upper Missouri River Breaks National Monument" as defined herein.

(12) "Non-Consumptive Use" means a beneficial use of water that does not cause a reduction in the source of supply or result in a reduction in the quantity or quality of water and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(13) "Parties" means the State of Montana and the United States.

(14) "Proclamation" means Presidential Proclamation 7398 of January 17, 2001, designating the Upper Missouri River Breaks National Monument.

(15) "Proportionally Enforceable Stream Flow" means, as applied to the Arrow Creek water right described herein, a rate of flow that when measured at a point upstream of the designated enforcement point described in Article III.B.2, shall be equivalent to an instream flow right of five (5) cfs measured at the designated enforcement point.

(16) "Ramped Diversion" means a condition on new diversions that allows for an increase in diversion of up to twenty (20) cubic feet per second (cfs) per day to prevent sudden drops in the natural recession rate of the river hydrograph.

(17) "Recognized Under State Law" when referring to a water right or use means a water right or use protected by state law, but does not include state recognition of a federal or tribal reserved water right arising under federal law.

(18) "Reserved Water Right" means collectively the federal reserved water rights to quantified instream flows in the Judith River and Arrow Creek as described herein.

(19) "State" means the state of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, "state" means the Director of the Montana Department of Natural Resources and Conservation or the Director's designee.

(20) "Upper Missouri River Breaks National Monument" means the federal reservation of land that was designated under the Antiquities Act of 1906, 16 U.S.C. 431-433 (1906, Supp. ____) by Presidential Proclamation 7398.

(21) "United States" means the federal Government and all officers, agencies, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of the Interior or the Secretary's Designee.

ARTICLE III
WATER RIGHT

The Parties agree that the following water rights are in settlement of the reserved water rights claims of the United States for the Monument. All water rights described in this Article are subject to Article IV of this Compact as well as any specific additional conditions set forth below.

A. Priority Date. The United States' water rights for instream flow purposes within the Upper Missouri River Breaks National Monument that are described herein have a priority date of January 17, 2001. The United States' January 17, 2001, water rights are subordinate in priority to water rights Recognized Under State Law existing on June 1, 2012. Accordingly, any water right Recognized Under State Law with a priority date before June 1, 2012, is not subject to call by the United States in the exercise of the Reserved Water Right.

B. Instream Flow. The United States has water rights for minimum instream flows in the Judith River and Arrow Creek as follows:

1. The Judith River. From the point furthest upstream where the Monument boundary crosses the mainstem river channel on the southern boundary of the NW 1/4 SE 1/4 of section 2, T.21N., R.16E., MPM, to the confluence with the Missouri River. The water right is in the amount of an instream flow rate of one hundred and sixty (160) cubic feet per second (cfs), to be measured at the United States Geological Survey (USGS) Gaging Station #06114700 near the confluence of the Judith River with the Missouri River. The period of use for this right is from January 1 to December 31.

2. Arrow Creek. From the point furthest upstream where the Monument Boundary crosses the mainstem creek channel on the western boundary of the SW 1/4 of section 6, T.20N., R.15E., MPM, to the confluence with the Missouri River. The water right is in the amount of an instream flow rate of five (5) cfs enforceable at the point immediately upstream of the confluence of Arrow Creek and Flat Creek in the SE 1/4 NE 1/4 of section 6, T.22N., R15E., MPM (the designated enforcement point). The period of use for this right is from March 1 to July 31.

i. Provision for Alternate Enforcement Location. The parties recognize that measurement at the confluence of Arrow Creek and Flat Creek may be difficult to administer and that measurement at an upstream point may be more feasible. The enforceable level of the flow rate shall be adjusted to an amount proportional to the 5 cfs if measurement is conducted at an upstream measurement point rather than at the designated enforcement point described above. The Proportionally Enforceable Stream Flow shall be determined jointly by the BLM and the Department, after additional stream flow monitoring is conducted by the BLM to provide the Parties sufficient data to make a determination. Prior to implementing a Proportionally Enforceable Stream Flow, the Parties shall: (1) provide notice to water users in the affected basin of the proposed revision to the enforceable amount; (2) hold at least one meeting in Stanford, Montana, preceded by such notice as may be required under State law for public meetings, at which the Parties shall explain the proposed revision; and (3) provide a reasonable period for receipt of any written public comment concerning the proposed revision. Any future revision of the designated enforcement point and implementation of a Proportionally Enforceable Stream Flow as provided in this section shall be based solely on stream flow monitoring considerations and shall be subject to the same conditions as provided above. Such future revision shall not be considered a modification of this Compact or an enlargement or diminution of the 5 cfs instream flow right in Arrow Creek.

C. Stream Reaches on which new mainstem impoundments will be prohibited after the Effective Date of the Compact.

1. The Judith River. From the confluence of the Middle and South Forks of the Judith River downstream to its confluence with the Missouri River.

2. Arrow Creek. From its confluence with Hay Creek downstream to its confluence with the Missouri River.

D. Conditions to be applied to permits issued after the Effective Date of the Compact.

1. Direct from source diversions from the Judith River or Arrow Creek that have a diversion capacity greater than 20 cfs shall be operated as a Ramped Diversion. The permit conditions shall require such diversions to be implemented incrementally with an increase of no more than 20 cfs in any 24-hour period.

ARTICLE IV
COMPACT IMPLEMENTATION

A. Judith River. Judith River flows that are not already appropriated as of the Effective Date of this Compact will be available for future development, subject to the Reserved Water Right and applicable permit conditions as described herein. The Department may approve new uses after the Effective Date of this Compact, but the Department shall condition any permit or approval of new uses to provide that such uses may not cause the flow of the Judith River to fall below one hundred and sixty (160) cfs from January 1 through December 31 at the United States Geological Survey gaging station #06114700 on the lower Judith River near the mouth of the Judith River near Winifred, Montana; and, if required, with the diversion restrictions described under Article III.C. Appropriations occurring after June 1, 2012, shall be subject to a call by the United States in the exercise of the Reserved Water Right at any time streamflow falls below the minimum instream flow requirement for five (5) consecutive days.

B. Arrow Creek. Arrow Creek flows that are not already appropriated as of the Effective Date of this Compact will be available for future development subject to the Reserved Water Right and applicable permit conditions as described herein. The Department may approve new uses after the Effective Date of this Compact but shall condition any permit or approval of new uses to provide that such uses may not cause the flow of Arrow Creek to fall below five (5) cfs if measured at the confluence of Arrow Creek and Flat Creek at the designated enforcement point described in Article III.B.2 above—or if measured at an alternate enforcement location as described in Article III.B.2.i above, a Proportionally Enforceable Stream Flow amount as described therein—from March 1 through July 31; and, if required, with the diversion restrictions described under Article III.C. New appropriations occurring after June 1, 2012, shall be subject to a call by the United States in the exercise of the Reserved Water Right at any time stream flow falls below the minimum instream flow requirement as measured at the designated enforcement point as described in Article III.B.2 above, or at an alternate enforcement point provided for in Article III.B.2.i.

C. Conditions to be applied to permits issued after the Effective Date of the Compact.

1. Direct from source diversions from the Judith River or Arrow Creek that have a diversion capacity greater than twenty (20) cfs shall be operated as a Ramped Diversion. The permit conditions shall require that diversions be implemented incrementally with an increase of no more than 20 cfs in any 24-hour period.

D. Uses exempted from curtailment by the United States' exercise of the Reserved Water Right during times of shortage. During times when there is insufficient water to satisfy the Reserved Water Right, and curtailment of junior water rights is otherwise contemplated under Articles III.A and B, the following water rights shall not be subject to call or curtailment for the benefit of the Reserved Water Right:

1. Non-Consumptive Uses located upstream of the instream flow reaches identified in Article III.

2. Groundwater Uses developed pursuant to 85-2-306, MCA. Water permits/certificates under the provisions of 85-2-306, MCA, shall not be subject to call by the Reserved Water Right. Should the Montana Legislature amend the requirements of this section to a more restrictive standard than that in effect under this subsection on the Effective Date of this Compact (35 gallons per minute or less and not to exceed 10 acre-feet per year), the more restrictive standard shall apply to appropriations permitted after the effective date of the amending legislation when determining whether the right is subject to curtailment by the United States in the exercise of the Reserved Right.

3. Stockwater impoundments of less than 15 acre-feet capacity and total appropriation less than 30 acre-feet per year.

a. Stockwater impoundments of less than 15 acre-feet capacity and a total appropriation of less than 30 acre-feet per year that are not diverted from a perennial flowing stream and that are constructed on and will be accessible to a parcel of land that is owned or under control of the applicant and that is 40 surface acres or larger shall not be subject to call by the Reserved Water Right.

4. Temporary Emergency Appropriations under 85-2-113(3), MCA.

5. An Application submitted pursuant to 85-20-1401, MCA, Article VI.

6. An application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:

a. Remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

b. Aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or

c. Remedial actions taken pursuant to Title 75, chapter 10, part 7, of the Montana Code Annotated.

E. Prohibition on Future Mainstem Impoundment. DNRC may permit no new impoundments that do not meet the permit exception requirements of 85-2-306, MCA, on the mainstem of the Judith River or Arrow Creek as described in Article III.C. Reclamation, repair, or rehabilitation of an existing impoundment shall not be considered a new impoundment, provided that reclamation, repair, or rehabilitation shall not cause the impoundment to exceed the storage volume listed on the statement of claim.

F. Action for enforcement of Provisions of Article III. The United States may file an original action in a court of competent jurisdiction to enforce the provisions of Article III at any time. The United States shall not be required to exhaust any available administrative remedies in order to enforce Article III of this Compact.

ARTICLE V
GENERAL PROVISIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights.

1. The relationship between the water rights of the Bureau of Land Management described herein and any rights to water of an Indian Tribe in Montana, or of any federally derived water right of an individual, or of the United States on behalf of such Tribe or individual shall be determined by the rule of priority.

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any Indian Tribes and Tribal members in Montana.

3. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of an Indian Tribe regarding boundaries or property interests in the State of Montana.

4. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the Bureau of Land Management for the Upper Missouri River Breaks National Monument.

B. General Disclaimers. Nothing in this Compact may be construed or interpreted:

1. As a precedent for the litigation of reserved water rights or the interpretation or administration of existing or future compacts between the United States and the State; or of the United States and any other state;

2. As a waiver by the United States of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact, or, except as provided in this Compact, any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the State Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact;

3. As a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;

4. To establish a precedent for other agreements between the State and the United States or an Indian tribe;

5. To determine the relative rights, inter sese, of persons using water under the authority of state law or to limit the rights of the parties or a person to litigate an issue not resolved by this Compact;

6. To create or deny substantive rights through headings or captions used in this Compact;

7. To expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of this Compact;

8. To affect the right of the State to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or an Act of Congress;

9. To affect, in any manner, the entitlement to or quantification of other federal water rights. This Compact is binding on the United States solely in regard to the water rights of the United States for the Upper Missouri River Breaks National Monument, and this Compact does not affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact.

C. Use of Water Right. Non-use of all or a part of the Reserved Right shall not constitute abandonment of the right. The Reserved Right need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes outlined in the Proclamation.

D. Concurrent with other Non-Consumptive Instream Water Uses. The federal reserved water right for instream flows for the Upper Missouri River Breaks National Monument described in this Compact shall run concurrently with any other non-consumptive instream water rights, and shall not be additive to such non-consumptive instream rights.

E. Appropriation Pursuant to State Law. Nothing in this Compact may prevent the United States from seeking a water appropriation pursuant to State law for use on the reserved land within the Upper Missouri River Breaks National Monument or for use outside the boundaries of the federal reservation for which a water right is described in this Compact, provided that a water right obtained in this manner shall be Recognized Under State Law and shall be administered pursuant to State law.

F. Reservation of Rights. The parties expressly reserve all rights not granted, described, or relinquished in this Compact.

G. Severability. The provisions of this Compact are not severable.

H. Multiple Originals. This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

I. Notice. Unless otherwise specifically provided for in this Compact, service of notice, except service in litigation, shall be:

1. State. Upon the Director of the Department or its successor agency, and such other officials as the Director may designate in writing.

2. United States. Upon the Secretary of the Interior and such other officials as the Secretary may designate in writing.

ARTICLE VI
FINALITY OF COMPACT

A. Binding Effect.

1. The Effective Date of this Compact is the date of the ratification of this Compact by the Montana Legislature, written approval by the United States Department of the Interior, and written approval by the United States Department of Justice. Once effective, all of the provisions of this Compact shall be binding on:

a. the State and a person or entity of any nature whatsoever using, claiming or in any manner asserting a right under the authority of the State to the use of water; and

b. except as otherwise provided in Article V.A, the United States, a person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.

2. Following the Effective Date, this Compact may not be modified without the written consent of both parties. Any attempt to unilaterally modify this Compact by either party shall render this Compact voidable at the election of the other party.

B. Settlement of Claims. The parties intend that the Reserved Water Rights described in this Compact are in full and final settlement of the reserved water right claims of the United States for the Upper Missouri River Breaks National Monument. Pursuant to this settlement, by which certain federal Reserved Water Rights are expressly recognized by the State in this Compact, the United States hereby and in full settlement of any and all claims filed by the United States or which could have been filed by the United States for the Monument relinquishes forever all said claims on the Effective Date of this Compact to water within the State of Montana for Reserved Water Rights for the above mentioned unit. The State agrees to recognize the Reserved Water Right described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as any other appropriation.

C. The parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the .... day of ...., 2013.

History: En. Sec. 1, Ch. 224, L. 2013.

Part 19
Confederated Salish and Kootenai-Montana Compact

85-20-1901. Water rights compact entered into by the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, the State of Montana, and the United States ratified. This Compact is entered into by and among the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, the State of Montana, and the United State of America to settle all existing claims to water of or on behalf of the Confederated Salish and Kootenai Tribes within the State of Montana.

ARTICLE I - RECITALS

WHEREAS, pursuant to the Hellgate Treaty of 1855, 12 Stat. 975, the Confederated Salish and Kootenai Tribes reserved the Flathead Indian Reservation; and

WHEREAS, the Confederated Salish and Kootenai Tribes claim aboriginal water rights and, pursuant to said Treaty, reserved water rights to fulfill the purposes of the Treaty and the Reservation; and

WHEREAS, in 1979, the United States, on its own behalf and on behalf of the Confederated Salish and Kootenai Tribes, their members and Allottees brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribes' water rights claims, see United States v. Abell, No. CIV-79-33-M (filed April 5, 1979); and

WHEREAS, as a result of Congressional action and subsequent judicial interpretation, state courts have been found to possess, under certain circumstances, adjudicatory jurisdiction over federal reserved water rights held in trust by the United States for the benefit of Indians; see, McCarran Amendment 43 U.S.C. 666; Colorado River Conservation District v. United States, 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983); and

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes claims regarding the Confederated Salish and Kootenai Tribes' water rights; and

WHEREAS, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negotiate settlement of water rights claims filed by Indian tribes or filed on their behalf by the United States claiming reserved waters within the State of Montana; and

WHEREAS, the Federal district court litigation was stayed in 1983 pending the outcome of Montana State court water adjudication proceedings, see Northern Cheyenne v. Adsit, 721 F.2d 1187 (9th Cir.1983); and

WHEREAS, the adjudication of Confederated Salish and Kootenai Tribes' water rights in the State court proceeding has been stayed while negotiations are proceeding to conclude a compact resolving all water rights claims of the Confederated Salish and Kootenai Tribes; and

WHEREAS, the Confederated Salish and Kootenai Tribes, or their duly designated representatives, have authority to negotiate the Compact and the Tribal Council has the authority to execute this Compact pursuant to Article 6, Section 1, subsections (a), (c), and (u) of the Constitution and Bylaws of the Confederated Salish and Kootenai Tribes said Constitution adopted and approved under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended; and

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-17 and the Federal legislation ratifying this Compact identified in Article VIII.B; and

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. 1457, inter alia, and appropriate Federal legislation ratifying this Compact as identified in Article VIII.B; and

WHEREAS, the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States agree that the Tribal Water Right and other water rights described in this Compact, subject to the provisions of the Act of Congress identified in Article VIII.B, is in satisfaction of the water rights claims of the Tribes, their members and Allottees, and of the United States on behalf of the Tribes and their members and Allottees; and

WHEREAS, the Parties agree that it is in the best interest of all Parties that the water rights claims of the Confederated Salish and Kootenai Tribes be settled through agreement between and among the Tribes, the State of Montana, and the United States; and

WHEREAS, the Parties agree that there is a clear hydrological interrelationship between the surface water and Groundwater of the Reservation, and each use of water on the Reservation may affect water use by all water users on the Reservation; and

WHEREAS, the Parties agree that prudent and knowledgeable conservation, management, and protection of the water resources of the Reservation are essential to the health and welfare of all residents of the Reservation; and

WHEREAS, the Parties seek to secure to all residents of the Reservation the quiet enjoyment of the use of waters of the Reservation for beneficial uses; and

WHEREAS, the Parties agree to protect Tribal Instream Flows, Existing Uses, and Historic Farm Deliveries to Flathead Indian Irrigation Project irrigators; and

WHEREAS, the Parties desire to create a unitary administration system that would provide a single system for the appropriation and administration of the waters of the Reservation and for the establishment and maintenance of a single system of centralized records for all water uses of the Reservation regardless of whether the use is based on State or Federal law.

NOW THEREFORE, the Parties agree to enter into the Compact for the purpose of settling the water rights claims of the Confederated Salish and Kootenai Tribes, their members, and Allottees of the Flathead Indian Reservation, and of the United States on behalf of the Tribes, their members and Allottees, and to provide the necessary foundation for the establishment of a board composed of Tribal and State appointed representatives to provide for the unified administration of all water resources on the Reservation.

ARTICLE II - DEFINITIONS

The following definitions shall apply for purposes of the Compact:

1. "Acre-foot" or "Acre-feet" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet of water.

2. "Adaptive Management" means an ongoing process of decision-making, based on water measurement and accounting designed to continuously manage and improve the allocation of water between Instream Flows, Minimum Reservoir Pool Elevations, and FIIP Water Use Rights pursuant to the Adaptive Management Appendix 3.5.

3. "Allottee" or "Allottees" means an owner of an interest in a tract of land held in trust by the United States which was allotted pursuant to the Act of April 23, 1904, 33 Stat. 302, as amended, or the Act of February 25, 1920, 41 Stat. 452, as amended.

4. "Alternate Value" means, as applied to the consensual agreements provided for by Article III.G.3, the quantity of water allowed under a claim decreed by the Montana Water Court or water right granted by the DNRC.

5. "Appropriation Right" means a right to appropriate water issued by the Water Management Board pursuant to the terms of this Compact and the Law of Administration.

6. "Arising Under State Law" means, as applied to a water right, a water right created under Montana law or a water right held by a nonmember of the Tribes on land not held in trust by the United States for the Tribes or a Tribal member and for which a claim was required to be filed in the Montana general stream adjudication.

7. "Basin 76D" means the hydrologic Basin 76D, including the Kootenai River and its tributaries, as shown in Appendix 1.

8. "Basin 76E" means the hydrologic Basin 76E, including Rock Creek and its tributaries, as shown in Appendix 1.

9. "Basin 76F" means the hydrologic Basin 76F, including the Blackfoot River and its tributaries, as shown in Appendix 1.

10. "Basin 76G" means the hydrologic Basin 76G, including the Clark Fork River above the Blackfoot River, and its tributaries, as shown in Appendix 1.

11. "Basin 76GJ" means the hydrologic Basin 76GJ, including Flint Creek and its tributaries, as shown in Appendix 1.

12. "Basin 76H" means the hydrologic Basin 76H, including the Bitterroot River and its tributaries, as shown in Appendix 1.

13. "Basin 76I" means the hydrologic Basin 76I, including the Middle Fork of the Flathead River and its tributaries, as shown in Appendix 1.

14. "Basin 76J" means the hydrologic Basin 76J, including the South Fork of the Flathead River and its tributaries, as shown in Appendix 1.

15. "Basin 76K" means the hydrologic Basin 76K, including the Swan River and its tributaries, as shown in Appendix 1.

16. "Basin 76L" means the hydrologic Basin 76L, including the Flathead River below Flathead Lake, and its tributaries, as shown in Appendix 1.

17. "Basin 76LJ" means the hydrologic Basin 76LJ, including the Flathead River to and including Flathead Lake, and its tributaries, as shown in Appendix 1.

18. "Basin 76M" means the hydrologic Basin 76M, including the Clark Fork River between the Blackfoot River and the Flathead River, and its tributaries, as shown in Appendix 1.

19. "Basin 76N" means the hydrologic Basin 76N, including the Clark Fork River below the Flathead River, and its tributaries, as shown in Appendix 1.

20. "Call" means the right of the holder of a water right with a senior priority date and an immediate need for a use of water to require a holder of a water right with a junior priority date to refrain from appropriating water otherwise physically available until the senior water right is satisfied.

21. "Cfs" means cubic feet per second.

22. "Change in Use" means an authorized change in the point of diversion, the place of use, the period of use, the purpose of use, or the place of storage of an Appropriation Right issued by the Water Management Board under this Compact and the Law of Administration, or of an Existing Use. A changed water right retains the original priority date of that right.

23. "Compact" means this water rights settlement entered into by the Confederated Salish and Kootenai Tribes, the State and the United States.

24. "Compact Implementation Technical Team" or "CITT" means the entity established by this Compact to plan and advise the Project Operator on the implementation of FIIP Operational Improvements, Rehabilitation and Betterment, and Adaptive Management. The CITT duties and responsibilities are defined in more detail in Appendix 3.5.

25. "Compact Management Committee" or "CMC" means the entity described in Article IV.G.5 formed to provide policy and administrative oversight of the CITT.

26. "Court of Competent Jurisdiction" means a State or Tribal court that otherwise has jurisdiction over the matter so long as the parties to the dispute to be submitted to that court consent to its exercise of jurisdiction, but if no such court exists, a Federal court.

27. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.

28. "Effective Date" means the date on which the Compact is finally approved by the Tribes, by the State, and by the United States, and on which the Law of Administration has been enacted and taken effect as the law of the State and the Tribes, whichever date is latest.

29. "Existing Use" means a use of water under color of Tribal, State or Federal law in existence as of the Effective Date, including uses in existence on that date that are eligible for either of the registration processes set forth in the Law of Administration; provided that any portion of a Water Right Arising Under State Law within the Reservation that is, at any point after the date the ratification of the Compact by the Montana Legislature takes effect under State law, voluntarily relinquished or is legally determined to be abandoned, relinquished, or have otherwise ceased to exist, shall be stricken from the relevant basin decree as a Water Right Arising Under State Law and be entitled to no further protection as such a right or as an Existing Use.

30. "Flathead Indian Irrigation Project" or "FIIP" means the irrigation project developed by the United States to irrigate lands within the Reservation pursuant to the Act of April 23, 1904, Public Law 58-159, 33 Stat. 302 (1904), and the Act of May 29, 1908, Public Law 60-156, 35 Stat. 441 (1908), and includes, but is not limited to, all lands, reservoirs, easements, rights-of-way, canals, ditches, laterals, or any other FIIP facilities (whether situated on or off the Reservation), headgates, pipelines, pumps, buildings, heavy equipment, vehicles, supplies, records or copies of records and all other physical, tangible objects, whether of real or personal property, used in the management and operation of the FIIP.

31. "FIIP Influence Area" means the lands influenced by the operations of the FIIP as identified on the map attached hereto as Appendix 2.

32. "FIIP Water Use Right" means the water right set forth in Article III.C.1.a that is dedicated to use by the FIIP and FIIP irrigators and includes uses of water for irrigation and Incidental Purposes allowed by the FIIP through water service contracts. This water right is the source for the entitlement to delivery of available irrigation water for assessed parcels as provided by Article IV.D.2.

33. "Flathead Indian Reservation" or "Reservation" means all land within the exterior boundaries of the Indian Reservation established under the July 16, 1855 Treaty of Hellgate (12 Stat. 975), notwithstanding the issuance of any patent, and including rights-of-way running through the Reservation.

34. "Flathead Reservation Water Management Board," "Water Management Board," or "Board" means the entity established by this Compact and the Law of Administration to administer the use of all water rights on the Reservation upon the Effective Date.

35. "Flathead System Compact Water" means that portion of the Tribal Water Right consisting of 229,383 Acre-feet per year that the Tribes may withdraw from the Flathead River or Flathead Lake, which includes up to 90,000 Acre-feet per year stored in Hungry Horse Reservoir, with a maximum total volume consumed of 128,158 Acre-feet per year.

36. "Historic Farm Deliveries" means the aggregate annual volume of water for irrigation and Incidental Purposes on the FIIP that was delivered to all farm turnouts within an individual River Diversion Allowance Area prior to the date the ratification of the Compact by the Montana Legislature takes effect under State law. Historic Farm Deliveries include historic crop consumption and estimated standard rates of on-farm conveyance and irrigation

application inefficiencies and are used to evaluate RDA values pursuant to Article IV.D.1.e. Historic Farm Delivery volumes are specified in Appendix 3.3.

37. "Groundwater" means any water that is beneath the surface of the earth.

38. "High Mountain Lakes" means those lakes shown in Appendix 17.

39. "Hungry Horse Dam" means the dam that is a part of the Hungry Horse Project.

40. "Hungry Horse Project" means that project authorized by the Act of June 5, 1944 (58 Stat. 270, Public Law 78-329) to be constructed and operated by the US Bureau of Reclamation. The Act of May 29, 1958 (Public Law 85-428) amended the authorizing act to make Hungry Horse a Reclamation project subject to Reclamation laws.

41. "Hungry Horse Reservoir" means the reservoir that is a part of the Hungry Horse Project.

42. "Incidental Purpose(s)" means water delivered through or diverted from FIIP facilities for purposes incidental to irrigation, including but not limited to Rehabilitation and Betterment, and lawn and garden purposes allowed by the FIIP through water service contracts.

43. "Individual Indian Owner" means a Tribal member and his or her heirs or an Allottee and his or her heirs who is an owner of an interest in trust or restricted lands and who has a documented use of the Tribal Water Right registered pursuant to the terms of this Compact and the Law of Administration.

44. "Instream Flow" means a stream flow retained in a watercourse to benefit the aquatic environment. Instream Flow may include Natural Flow or streamflow affected by regulation, diversion, or other modification. A water right for Instream Flow purposes is quantified for a stream reach and measured for enforcement purposes at a specified point.

45. "Law of Administration" or "Unitary Administration and Management Ordinance" means the body of laws enacted by both the State and the Tribes to provide for the administration of surface water and Groundwater within the Reservation, that are both materially consistent with the substantive provisions of Appendix 4.

46. "Lease" means, as applied to the Tribal Water Right, an authorization for a Person or Persons to use any part of the Tribal Water Right through a service contract, temporary assignment, or other similar agreement of limited duration.

47. "MFWP" means the Montana Department of Fish, Wildlife, and Parks, or any successor agency.

48. "Minimum Enforceable Instream Flows" or "MEFs" means the schedule of monthly minimum enforceable streamflow levels that are set forth in Appendix 3.1.

49. "Minimum Reservoir Pool Elevations" means the minimum pool water elevations for FIIP reservoirs specified in the table attached hereto as Appendix 3.1 and abstracts of water right attached hereto as Appendix 15.

50. "Natural Flow" means the rate and volume of water movement past a specified point on a natural stream, produced from a drainage area for which there have been no effects caused by diversion, storage, import, export, return flow, or changes in consumptive use.

51. "New Development" means the development of a use of the Tribal Water Right set forth in the Compact, from any source, commencing after the Effective Date, and encompasses all uses of the Tribal Water Right not included within the definition of Existing Use.

52. "Operational Improvements" means practices that improve the ability of the Project Operator to plan for and manage water storage and allocation between Instream Flows and FIIP Water Use Rights. Operational Improvements address water supply planning, reservoir management, Instream Flow management, water accounting and reporting, Stock Water delivery, irrigation wastewater, measurement at diversion works, water measurement at farm delivery locations, and water measurement at irrigation wasteways. Operational Improvements are set forth in the schedule attached hereto as Appendix 3.4.

53. "Parties" means the Tribes, the State, and the United States.

54. "Person" means an individual or any other entity, public or private, including the Tribes, the State, and the United States, and all officers, agents and departments of each sovereign.

55. "Project Operator" means the entity with the legal authority and responsibility to operate the Flathead Indian Irrigation Project.

56. "Reallocated Water" means the water from that portion of any given FIIP diversion or RDA that is made available through increased efficiency resulting from Rehabilitation and Betterment projects.

57. "Rehabilitation and Betterment" means both irrigation facility upgrades that improve water management and operational control at irrigation diversion works, and irrigation facility upgrades to reduce losses in conveyance of water from irrigation sources of supply to irrigation points of use. Rehabilitation and Betterment actions include, but are not limited to, reconstruction, replacement, and automation at irrigation diversion works; lining of open canals; and placement of open canals in pipe.

58. "River Diversion Allowance" or "RDA" means initially the volume of water identified in Appendix 3.2 and defined for wet, normal and dry Natural Flow years that is necessary to be diverted or pumped to supply the FIIP Water Use Right. As Reallocated Water is made available through Rehabilitation and Betterment, the RDA is the amount defined in Appendix 3.2, reduced by the volume of Reallocated Water made available by a particular Rehabilitation and Betterment project.

59. "River Diversion Allowance Area" or "RDA Area" means geographic divisions of the FIIP to which water is diverted. RDA Areas are depicted in Appendix 3.2.

60. "Secretary" means the Secretary of the United States Department of the Interior, or the Secretary's duly authorized representative.

61. "Shared Shortages" means a water management procedure to be applied when water supply is insufficient to satisfy both MEFs and RDAs simultaneously.

62. "State" means the State of Montana and all officers, agencies, departments and political subdivisions thereof.

63. "Stock Water" means water used for livestock.

64. "Target Instream Flows" or "TIFs" means the schedule of monthly Instream Flow levels, defined for normal and wet Natural Flow years that are identified in Appendix 3.1.

65. "Tribal Council" means the duly elected governing body of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana.

66. "Tribal Natural Resources Department" means the governmental subdivision of the Tribes authorized by Tribal Ordinance No. 78-B, as amended, or any successor agency.

67. "Tribal Water Right" means the water rights of the Confederated Salish and Kootenai Tribes, including any Tribal member or Allottee, the basis of which are federal law, as set forth in Article III.A, Article III.C.1.a through j, Article III.C.1.k.i, Article III.C.1.l.i, Article III.D.1 through 3 and Article III.D.7 and 8. The term "Tribal Water Right" also includes those rights identified in Article III.H that are appurtenant to lands taken into trust by the United States on behalf of the Tribes.

68. "Tribes" means the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, and all officers, agencies, and departments thereof.

69. "United States" means the Federal government and all officers, agencies and departments thereof.

70. "Water Rights Arising Under State Law" means those valid water rights Arising Under State Law existing as of the Effective Date and not subsequently relinquished or abandoned, as those rights are: decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permitted by the DNRC; exempted from filing in the Montana general stream adjudication pursuant to 85-2-222, MCA; or excepted from the permitting process pursuant to 85-2-306, MCA.

71. "Wetland" means an area that is inundated or saturated by surface water or Groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

ARTICLE III - WATER RIGHTS OF THE TRIBES

The water rights of the Tribes quantified in Article III are composed of two parts: water rights whose basis is Federal law that are defined and referred to as the Tribal Water Right and those Water Rights Arising Under State Law identified in Article III.C.1.k.ii, III.C.1.l.ii, III.D.4, 5, and 6, and III.H.

A. Religious or Cultural Uses. The Tribal Water Right described in this Article III includes all traditional, religious, or cultural uses of water by members of the Confederated Salish and

Kootenai Tribes within Montana. Individual exercises of traditional, religious, or cultural uses are exempt from the Registration process contained in the Law of Administration.

B. Abstracts of Water Right. Abstracts of water right appended to this Compact are a substantive element of this Compact. The language of the abstracts, including all informational remarks, shall control in the event of any inconsistency between the Compact and the abstracts of water right; provided however, that the Parties upon written mutual agreement may make technical corrections to the abstracts prior to the Parties submission to the Montana Water Court of the motion for entry of the Proposed Decree identified in Article VII.B. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

C. Basins 76L and 76 LJ and Flathead Indian Irrigation Project Irrigation Water Diversions from Basins 76F and 76N.

1. Quantification.

a. Flathead Indian Irrigation Project. The Tribes have the right to water that is supplied to the Flathead Indian Irrigation Project to be used for such purposes in such volumes and flow rates and from such sources of supply as identified in the abstracts of water right attached hereto as Appendix 5. The FIIP will serve up to, but not more than 135,000 acres. The exercise of this portion of the Tribal Water Right shall be satisfied by meeting the RDA values for each RDA Area described in Appendix 3.2 as evaluated pursuant to Article IV.D.1.e, and is subject to Article IV.D through F.

The priority date for the portion of the Tribal Water Right used by the FIIP is July 16, 1855.

b. Existing Uses by the Tribes, their Members and Allottees.

i. The Tribal Water Right includes all Existing Uses by the Tribes, their members and Allottees that are not Water Rights Arising Under State Law and are not otherwise specifically quantified in other sections of this Article III.

ii. Water Rights Arising Under State Law held by the Tribes, their members and Allottees will be satisfied pursuant to their own terms as finally decreed by the Montana Water Court or permitted by the DNRC.

iii. For each Existing Use identified in Article III.C.1.b.i to be valid and enforceable, the Tribes, or each Tribal member or Allottee claiming such an Existing Use, shall complete the process for the registration of uses of the Tribal Water Right set forth in the Law of Administration. Such uses include but are not limited to irrigation, Stock Water, domestic, commercial, municipal and industrial purposes, as well as those historically irrigated allotments that are held for individuals in trust by the United States that are not served by the FIIP and that are identified on the map and table attached hereto as Appendix 6.

iv. Uses of the Tribal Water Right for which abstracts are appended to this Compact, including uses on the FIIP, are exempt from the registration requirement set forth in Article III.C.1.b.iii.

v. The priority date for water uses registered pursuant to Article III.C.1.b.iii and the Law of Administration is July 16, 1855.

c. Flathead System Compact Water. The Tribes have a direct flow water right from the Flathead River with the following elements:

Source of Water: Flathead River, Flathead Lake, and the South Fork of the Flathead River up to Hungry Horse Reservoir

Point of Diversion: From Flathead Lake or the Flathead River, either on or off of the Reservation

Purpose: Any beneficial use

Diversion Volume: 229,383 Acre-feet per year

Depletion Volume: 128,158 Acre-feet per year

Period of Diversion and Depletion: January 1 through December 31

i. As part of the Tribal Water Right quantified in this Article III.C.1.c, the Tribes shall be entitled to an allocation of 90,000 Acre-feet per year, as measured at the Hungry Horse Dam, of storage water in Hungry Horse Reservoir.

ii. This water right shall be used in a manner that ensures impacts associated with the exercise of this water right are no greater than those identified in model run: Natural Q + 90K of the United States Bureau of Reclamation's Final Flathead Basin Depletions Study (USBR, October 2012), attached hereto as Appendix 7. In the event that the impacts exceed those identified in model run: Natural Q + 90K of the United States Bureau of Reclamation's Final Flathead Basin Depletions Study, the use of the water right set forth in this Article III.C.1.c shall be reduced in such amounts as are necessary to immediately achieve impacts that are no greater than those identified in model run: Natural Q + 90K of the United States Bureau of Reclamation's Final Flathead Basin Depletions Study.

iii. The releases of the stored water identified in Article III.C.1.c.i shall be limited in accordance with the "Biological Impact Evaluation and Operational Constraints for a proposed 90,000 Acre-foot withdrawal" (State of Montana, September 14, 2011) attached hereto as Appendix 8. The Parties upon mutual written agreement, and in conformance with other applicable provisions of law including but not limited to the Endangered Species Act of 1973, 16 U.S.C. 1531, et seq. (ESA), may amend the Biological Impact Evaluation Constraints identified in the September 14, 2011 report. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

iv. The exercise of this water right shall conform with the minimum instream flow schedules, as measured at the USGS gaging station on the Flathead River at Columbia Falls (12363000) and the USGS gaging station on the Flathead River at Polson (12372000) as identified in Tables 3 through 6 of Appendix 7, as well as the minimum flow requirements set forth in Table 5 that must also be met downstream at the USGS gaging station on the Flathead River at Perma (123887000). The exercise of this water right shall also conform to the ramping rates, as measured below Kerr and Hungry Horse Dams, and identified in Tables 3 through 6 of Appendix 7. In the event that the minimum instream flow schedules or ramping rates are not met, the use of the water right set forth in this Article III.C.1.c shall be suspended until such time as those minimum instream flow schedules and ramping rates are achieved. The Parties upon mutual written agreement, and in conformance with applicable ESA and Federal Energy Regulatory Commission licensing requirements for the three previously identified sites, may amend the limitations for releases from Hungry Horse Reservoir that are required to conform with minimum instream flow and ramping rate schedules at these sites. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

v. The exercise of this water right shall also conform with the Flathead Lake filling criteria identified on page 12 of Appendix 7.

vi. The Tribes may use any amount of the stored water identified in Article III.C.1.c.i that is not necessary to be released each year pursuant to the provisions of Article III.C.1.c.ii through v, for any beneficial purpose, subject to the terms and conditions of this Compact.

vii. Use of the 90,000 Acre-feet of water from Hungry Horse Reservoir is subject to the approval of, and any terms and conditions specified by, Congress.

viii. The priority date for Flathead System Compact Water is July 16, 1855.

ix. Any development by the Tribes of this Flathead System Compact Water Right outside the boundaries of the Reservation shall be pursuant to Article IV.B.5.c.

x. The Parties agree that nothing in this Compact precludes the Tribes from leasing Flathead System Compact Water to FIIP irrigators.

xi. The abstract of water right for this Flathead System Compact Water Right is attached hereto as Appendix 9.

d. Instream Flow Rights on Reservation.

i. Natural Instream Flows. The Tribes have Instream Flow rights in the quantities and locations identified in the abstracts of water right attached hereto as Appendix 10.

ii. FIIP Instream Flows. The Tribes have Instream Flow rights in the quantities and locations identified in the abstracts of water right attached hereto as Appendix 11. The exercise of this portion of the Tribal Water Right is subject to Article IV.C through F.

iii. Other Instream Flows. The Tribes have Instream Flow rights in the quantities and locations identified in the abstracts of water right attached hereto as Appendix 12. The Parties agree that a right identified in Appendix 12 shall only become enforceable on the date that an enforceable flow schedule for that right has been established pursuant to the process set forth in the Law of Administration, Section 2-1-115 of this Ordinance, for the development of such enforceable schedules.

iv. Interim Instream Flows. Until such time as the Instream Flow water rights set forth in Article III.C.1.d.ii become enforceable pursuant to Article IV.C, the Tribes shall be entitled to enforce the interim Instream Flows contained in Appendix 13 consistent with the provisions in Article IV.C and IV.E. The Tribes and the United States shall enforce these interim Instream Flows pursuant to Appendix 13 or existing practice as of December 31, 2014, and as described in the protocols in Appendix 14.

v. The priority date for the Instream Flow water rights set forth in this Article III.C.1.d is time immemorial.

e. Minimum Reservoir Pool Elevations in Flathead Indian Irrigation Project Reservoirs.

i. The Tribes have the right to water necessary to maintain Minimum Reservoir Pool Elevations for FIIP reservoirs in the quantities and locations set forth in the table and abstracts of water right attached hereto as Appendix 15. The exercise of this portion of the Tribal Water Right is subject to Article IV.C and E and superseding Federal law allowing for regulation of reservoir elevations.

ii. The Minimum Reservoir Pool Elevations will become enforceable according to the schedule attached hereto as Appendix 3.4.

iii. The priority date for the water rights set forth in this Article III.C.1.e is July 16, 1855.

iv. Until such time as the Minimum Reservoir Pool Elevations set forth in Article III.C.1.e become enforceable pursuant to Article IV.C, the Tribes shall be entitled to enforce those interim reservoir pool elevations identified in Appendix 13. The Tribes and the United States shall enforce these interim reservoir pool elevations only pursuant to Appendix 13 or existing practice as of December 31, 2014, and subject to superseding Federal law allowing for regulation of reservoir elevations.

f. Wetland Water Right. The Tribes have the right to all naturally occurring water necessary to maintain the Wetlands identified in the abstracts of water right attached hereto as Appendix 16. The priority date for the Wetland water rights set forth in this Article III.C.1.f is time immemorial.

g. High Mountain Lakes Water Right. The Tribes have the right to all naturally occurring water necessary to maintain the High Mountain Lakes identified in the abstracts of water right attached hereto as Appendix 17. The priority date for the High Mountain Lakes water rights set forth in this Article III.C.1.g is time immemorial.

h. Flathead Lake. The Tribes have the right to all naturally occurring water necessary to maintain the level of the entirety of Flathead Lake at an elevation of 2,883 feet as described in the abstract of water right attached hereto as Appendix 18. The priority date for the Flathead Lake water right set forth in this Article III.C.1.h is time immemorial.

i. Boulder Creek Hydroelectric Project. The Tribes have the right to water necessary to operate the Boulder Creek Hydroelectric Project as identified in the abstracts of water right attached hereto as Appendix 19. The priority date for the Boulder Creek Hydroelectric Project water right set forth in this Article III.C.1.i is July 16, 1855.

j. Hellroaring Hydroelectric Project. The Tribes have the right to water necessary to operate the Hellroaring Hydroelectric Project as identified in the abstracts of water right attached hereto as Appendix 20. The priority date for the Hellroaring Hydroelectric Project water right set forth in this Article III.C.1.j is July 16, 1855.

k. Wetlands Appurtenant to Lands Owned by Montana Fish Wildlife and Parks.

i. The Tribes and Montana Fish Wildlife and Parks (MFWP) have the right to all naturally occurring water necessary to maintain the Wetlands identified in the abstracts of water right attached hereto as Appendix 21. The priority date for Wetland water rights appurtenant to lands owned by MFWP is time immemorial.

ii. Upon the Effective Date, the Tribes shall be added as a co-owner with MFWP of water right number 76L 153988-00, the abstract of which is attached hereto as Appendix 22. MFWP shall make reasonable efforts to defend this right in the Montana general stream adjudication. The Tribes have the right but not the duty to participate in the defense of this right in the Montana general stream adjudication.

iii. The Tribes shall be added in an expeditious manner as a co-owner to any water right with a fish or fish and wildlife purpose that is appurtenant to land acquired by MFWP on the Reservation after the Effective Date.

iv. The Tribes shall be added in an expeditious manner as a co-owner to any Wetlands water right acquired by MFWP pursuant to the Law of Administration after the Effective Date.

v. MFWP shall be the sole entity entitled to manage the water rights identified in Article III.C.1.k. The recognition of these co-owned water rights does not confer on the Tribes any authority over the management of the MFWP-owned lands to which these water rights are appurtenant.

vi. MFWP shall meet and confer with the Tribes on a biennial basis, or on such other timeframe as the Tribes and MFWP may mutually agree, to discuss the exercise of these water rights. Such modifications to the meeting schedule are pursuant to, and shall not be deemed an amendment of, this Compact.

l. Wetlands Appurtenant to Lands Owned by Department of Interior Fish and Wildlife Service.

i. The Tribes and the Department of the Interior's Fish and Wildlife Service (FWS) have the right to all naturally occurring water necessary to maintain the Wetlands identified in the abstracts of water right attached hereto as Appendix 23. The priority date for Wetland water rights appurtenant to lands owned by FWS is time immemorial.

ii. Upon the Effective Date, the Tribes shall be added as a co-owner with FWS of water right numbers 76L 99338 00, 76L 99339 00, and 76L 99340 00, the abstracts of which are attached hereto as Appendix 24. FWS shall make reasonable efforts to defend these rights in the Montana general stream adjudication. The Tribes have the right but not the duty to participate in the defense of these rights in the Montana general stream adjudication.

iii. The Tribes shall be added in an expeditious manner as a co-owner to any water right with a fish or fish and wildlife purpose that is appurtenant to land acquired by FWS on the Reservation after the Effective Date.

iv. The Tribes shall be added in an expeditious manner as a co-owner to any Wetlands water right acquired by FWS pursuant to the Law of Administration, after the Effective Date.

v. FWS shall be the sole entity entitled to manage the water rights identified in this Article III.C.1.l. The recognition of these co-owned water rights does not confer on the Tribes any authority over the management of the FWS-owned lands to which these water rights are appurtenant.

vi. FWS shall meet and confer with the Tribes on a biennial basis, or on such other timeframe as the Tribes and FWS may mutually agree, to discuss the exercise of these water rights. Such modifications to the meeting schedule are pursuant to, and shall not be deemed an amendment of, this Compact.

D. Instream Flow Water Rights Off of the Reservation.

1. Mainstem Instream Flow Right in the Kootenai River (Basin 76D). The Tribes have an Instream Flow water right for the mainstem of the Kootenai River for the reach and with the associated flow rates set forth in the abstract of water right attached hereto as Appendix 25. The measurement point for this water right is USGS streamflow gage #12305000 located at Leonia, Idaho.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. The ability to enforce this right shall be suspended so long as Libby Dam remains in existence and the Army Corps of Engineers' operations of that dam are conducted consistently with the 2008 Federal Columbia River Power System Biological Opinion, the 2010 updated Biological Opinion, and the 2014 Supplemental Federal Columbia River Power System Biological Opinion, specifically as described in Reasonable and Prudent Alternative Action (RPA) No. 4 (Storage Project Operations), Table No. 1 (Libby Dam), including the Northwest Power and Conservation Council's 2003 mainstem amendments to the Columbia River Basin Fish and Wildlife Program, or any subsequent Biological Opinion(s) governing the same RPAs and Operations.

f. In the event of changes to the U.S. Army Corps of Engineers' (Corps) responsibilities under the ESA, such as the delisting of resident and anadromous fish species, that no longer require the

Corps to operate Libby Dam pursuant to ESA section 7 biological opinions or other substantive ESA requirements, the United States, acting through the Corps, the Tribes, and the State shall establish written protocols and understandings on meeting and enforcing the Tribes' mainstem Instream Flow right in the Kootenai River while also ensuring that the Corps' operations of Libby Dam meet all Federal statutory and regulatory requirements and obligations. Provided however, that any such enforcement protocol shall not alter the limitations on Call set forth in Article III.D.1.g. The establishment of such protocols and understandings are pursuant to, and shall not be deemed an amendment of, this Compact.

g. Should the suspension on enforcement set forth in Article III.D.1.e be lifted due to the removal of Libby Dam, this water right may be exercised to make a Call only against junior users whose point of diversion is from the mainstem of the Kootenai River and not its tributaries, the purpose of whose rights is irrigation and whose source of supply is surface water, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater that is connected to the mainstem of the Kootenai River, and whose flow rate is greater than 100 gallons per minute.

h. Call may be made only when the average daily flow drops below the enforceable level for the previous 24-hour period.

2. Mainstem Instream Flow Right in the Swan River (Basin 76K). The Tribes have an Instream Flow water right for the reach of the mainstem of the Swan River with the associated flow rates set forth in the abstract of water right attached hereto as Appendix 26. The measurement point for this water right is USGS streamflow gage #12370000 located immediately below Swan Lake near Big Fork, Montana.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. The Tribes, and/or the United States on behalf of the Tribes, shall be entitled to make a Call to enforce this water right only against junior users the purpose of whose rights is irrigation and whose source of supply is surface water, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater connected to surface sources in Basin 76K and whose flow rate is greater than 100 gallons per minute.

f. Call may be made only when the average daily flow drops below the enforceable level for the previous 24-hour period.

3. Mainstem Instream Flow Right in the Lower Clark Fork River (Basins 76M and 76N). The Tribes have a 5000 cfs Instream Flow water right for the reach of the mainstem of the Clark Fork River as set forth in the abstract of water right attached hereto as Appendix 27. The measurement point for this water right is USGS streamflow gage #12391950 located immediately below Cabinet Gorge Dam in Idaho.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. The Tribes, and/or the United States on behalf of the Tribes, shall be entitled to make a Call to enforce this water right only against junior users whose point of diversion is from the mainstem of the Clark Fork River and not its tributaries, the purpose of whose rights is irrigation and whose source of supply is surface water, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater connected to the mainstem of the Clark Fork River and whose flow rate is greater than 100 gallons per minute.

f. Call may be made only when the average daily flow drops below the enforceable level for the previous 24-hour period.

g. For so long as the Cabinet Gorge and Noxon Dams remain in existence, the enforceable level of this right is a flow rate equal to the lesser of 5000 cfs or the minimum flow level established by the FERC as a condition on the license for the Cabinet Gorge and Noxon Dams as that license condition may be modified over time.

4. Co-ownership of Instream and Public Recreation Water Rights Held by MFWP.

a. Upon the Effective Date, the Tribes shall be added as a co-owner with MFWP of the Water Rights Arising Under State Law held by MFWP for Instream Flow and recreation purposes that are identified on the tables attached hereto as Appendix 28 and Appendix 29. Nothing in this co-ownership changes any of the other elements of these Water Rights Arising Under State Law, including their priority dates or flow rates.

i. The Water Rights Arising Under State Law identified in Appendix 28 shall be included as part of the proposed decree to be filed with the Montana Water Court pursuant to Article VII.B.1.

ii. The Water Rights Arising Under State Law identified in Appendix 29 shall proceed through the Montana general stream adjudication as though they were not included in this Compact. MFWP shall make reasonable efforts to defend each of these rights identified in Appendix 29 in the Montana general stream adjudication. The Tribes have the right but not the duty to participate in the defense of these rights in the Montana general stream adjudication.

b. As co-owners, the Tribes and MFWP shall meet and confer on a biennial basis, or on such other timeframe as the Tribes and MFWP may mutually agree, to discuss the exercise of the rights identified in Article III.D.4.a, with a goal of establishing a joint plan for the exercise of these rights. Notwithstanding this planning process, the Tribes and MFWP each retain(s) the unilateral right to exercise each water right identified in Article III.D.4.a as each deem(s) appropriate, but neither the Tribes nor MFWP has any affirmative duty to take any particular action in regard to the exercise of any of these rights.

5. Co-ownership of Water Right Number 76M 94404-00 (Milltown Dam) in Basin 76G (Upper Clark Fork).

a. Upon the date the ratification of this Compact by the Montana Legislature becomes effective under State law, Water Right Arising Under State Law number 76M 94404-00 is changed as follows: the right is split into two separate active and enforceable Water Rights Arising Under State Law, 76M 94404-01 and 76M 94404-02, and the original water right elements are changed to support the maintenance and enhancement of fish habitat and take the form of two enforceable hydrographs. The elements of the changed and split water right are set forth in the two water rights abstracts attached hereto as Appendix 30. The measurement point for 76M 94404-01 is the USGS gage #12334550 at Turah, Montana, and the measurement point for 76M 94404-02 is the USGS gage #1234000 at Bonner, Montana.

i. The period of use of these water rights is January 1 to December 31 of each year.

ii. The point of diversion and place of use for these water rights is instream.

iii. These water rights shall not be exercised in conjunction with any artificial diversion.

iv. MFWP, and the Tribes after they become co-owners, and subject to the limitation on enforcement set forth in Article III.D.5.c, shall be entitled to make a Call to enforce these water rights only against junior users the purpose of whose rights is irrigation and whose source of supply is surface water, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater and whose flow rate is greater than 100 gallons per minute.

v. The enforceable levels of these water rights are identified in the table attached hereto as Appendix 31. The minimum enforceable level of this right is 700 cfs at the location of USGS gage #1234000 at Bonner, and 500 cfs at the location of USGS gage #12334550 at Turah.

vi. Call may be initiated on the day following a five-consecutive-day-period in which four out of five average daily river flows fall below their respective daily enforceable hydrograph values. Call may persist until such time as two average daily flows of the previous five-consecutive-day-period are in excess of their respective enforceable hydrograph values.

b. Upon the Effective Date, the Tribes shall be a co-owner with MFWP of these water rights. As co-owners, the Tribes and MFWP shall meet and confer on a biennial basis, or on such other timeframe as the Tribes and MFWP may mutually agree to, regarding the exercise of these rights, with a goal of establishing a joint plan for the exercise of these rights. The establishment of such a plan is pursuant to, and shall not be deemed an amendment of, this Compact.

Notwithstanding this planning process, the Tribes and MFWP each retains the unilateral right to exercise these water rights as each deems appropriate, but neither the Tribes nor MFWP has any affirmative duty to take any particular action in regard to the exercise of these rights.

c. The ability to enforce these rights shall be suspended for a period of 10 years from the date the ratification of this Compact by the Montana Legislature becomes effective under State law. During and after this period, the Tribes and MFWP shall engage with other stakeholders in the Upper Clark Fork Basin on water management subjects including, but not limited to, drought planning and the exercise of these water rights in conjunction with the other water rights in the Upper Clark Fork Basin.

d. For any analysis of the legal availability of water in the Upper Clark Fork Basin, these rights shall be considered to have a combined year-round flow rate of 2,000 cfs as measured at the location of USGS gauge #12340500 below the confluence of the Blackfoot and Clark Fork Rivers.

e. No owner of these water rights, acting independently or jointly, shall be entitled to lease, sell or change the purpose of these water rights.

f. The Water Rights Arising Under State Law identified in this Article III.D.5 shall be finally decreed as part of the decree of this Compact that will be proposed to the Montana Water Court pursuant to Article VII.B.1.

6. Contract Rights to Stored Water Held by MFWP in Basin 76H (Bitterroot).

a. MFWP is a party to two contracts for the delivery of stored water from Painted Rocks Reservoir: MFWP Water Purchase Contract Painted Rocks, between MFWP and DNRC, July 12, 2004 (attached hereto as Appendix 32); and Water Purchase Contract, March 5, 1958, as amended on March 5, 1958 (attached hereto as Appendix 33). In the event that MFWP obtains an ownership interest in any water rights pursuant to these contracts or obtains an ownership interest in any water rights pursuant to any future contract for the delivery of water from Painted Rocks Reservoir, MFWP shall expeditiously take all steps necessary to add the Tribes as a co-owner of said water rights.

b. MFWP is a party to a contract for the delivery of stored water from Lake Como: Agreement Between the Bitterroot Irrigation District and the United States Department of the Interior, Bureau of Reclamation for the Operation of the Enlarged Storage Pool at Lake Como, July, 1994 (attached hereto as Appendix 34). In the event that MFWP obtains an ownership interest in any water rights pursuant to this contract, or obtains an ownership interest in any water rights pursuant to any future contract for delivery of water from Lake Como, MFWP shall expeditiously take all steps necessary to add the Tribes as a co-owner of said water rights.

c. MFWP shall manage the Painted Rocks and Como contract rights, in a prudent, biologically based and environmentally sound manner, and within the terms and conditions of these contracts. MFWP will manage in the same manner any future contracts for the delivery of water from Painted Rocks or Lake Como to which MFWP becomes a party. The Tribes are an intended beneficiary of MFWP's management of these contracts, and have the right to challenge MFWP's management decisions in a Court of Competent Jurisdiction.

d. MFWP shall meet and confer with the Tribes on a biennial basis, or on such other timeframe as the Tribes and MFWP may mutually agree to, regarding the management of these contract rights. Such modifications to the meeting schedule are pursuant to, and shall not be deemed an amendment of, this Compact. If the Tribes become co-owners of any water right pursuant to this Article III.D.6 of the Compact, the Tribes and MFWP shall each retain the independent right to exercise each water right as each deems appropriate. Neither the Tribes nor MFWP has any affirmative duty to take any particular action in regard to the exercise of any of such rights. The Tribes do not assume any liability arising out of or resulting from any of the contracts identified in this Article III.D.6 pertaining to co-ownership of rights to stored water in Basin 76H.

7. Instream Flow Right on the North Fork of Placid Creek (Basin 76F). The Tribes have an Instream Flow water right for the upper reach of the North Fork of Placid Creek with the associated flow rates set forth in the abstract of water right attached hereto as Appendix 35. The measurement point for this water right shall be within the main channel of the North Fork of Placid Creek, below the North Fork Placid Creek FIIP Diversion located within the SE 1/4 of the NW 1/4 of the SE 1/4 of Section 29 in Township 17 North Range 16 West.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. The Tribes, and/or the United States on behalf of the Tribes, shall be entitled to make a Call to enforce this water right only against junior users the purpose of whose rights is irrigation and whose source of supply is surface water of Placid Creek, or against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater connected to Placid Creek and whose flow rate is greater than 100 gallons per minute.

f. Call may be made only when the average daily flow drops below the enforceable level for the previous 24-hour period.

8. Instream Flow Rights on Kootenai River Tributaries (Basin 76D). The Tribes have Instream Flow water rights for the reaches of the Kootenai River tributaries Big Creek, Boulder Creek, Steep Creek and Sutton Creek, with the associated flow rates set forth in the abstracts of water right attached hereto as Appendix 36.

a. The priority date for this water right is time immemorial.

b. The period of use of this water right is January 1 to December 31 of each year.

c. The purpose of this water right is for the maintenance and enhancement of fish habitat to benefit the instream fishery. This right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership.

d. The point of diversion and place of use for this water right is instream. This water right shall not be exercised in conjunction with any artificial diversion.

e. Water rights held by the United States Forest Service pursuant to the United States Forest Service-Montana Water Rights Compact, 85-20-1401, MCA, shall not be subject to Call by the Tribes and/or the United States on behalf of the Tribes.

f. The recognition of the Instream Flow water rights in this Article III.D.8 does not confer on the Tribes any authority over the management of National Forest System lands within Basin 76D, or any claim to ownership or other rights in that land. With the exception of future diversionary uses by the United States on National Forest System lands in excess of the Forest Service's reserved rights identified in Article III.D.8.e, the Tribes hold the United States harmless for delivery of water or maintenance of flows to meet this Instream Flow water right in Basin 76D.

E. Period of Use. The period of use of the Tribal Water Right set forth in this Article III shall be January 1 to December 31 of each year, provided however, that any portion of that water right that is dedicated to seasonal use, including irrigation use, shall have a period of use as set forth in the abstracts attached hereto as Appendix 5 or as set forth in the registration of such right pursuant to the Law of Administration, as applicable.

F. Points and Means of Diversion. The points and means of diversion for use of the Tribal Water Right set forth in this Article III are as set forth in the abstracts of water rights attached to this Compact or as may be provided for under the Law of Administration.

G. Call Protection.

1. Non-Irrigators. The Tribes, on behalf of themselves and the users of any portion of the Tribal Water Right set forth in this Compact, and the United States agree to relinquish their right to exercise the Tribal Water Right to make a Call against any Water Right Arising Under State Law whose purpose(s) do(es) not include irrigation.

2. Groundwater Irrigators with Flow Rates Less Than or Equal to 100 Gallons Per Minute. The Tribes, on behalf of themselves and the users of any portion of the Tribal Water Right set forth in this Compact and the United States agree to relinquish their right to exercise the Tribal Water Right to make a Call against any Water Right Arising Under State Law whose purpose is irrigation and whose source of supply is Groundwater and whose flow rate is less than or equal to 100 gallons per minute.

3. Irrigators Within the FIIP Influence Area.

a. The Tribes, the United States, and the Project Operator, agree to relinquish their right to exercise the Tribal Water Right to make a Call against that portion of any Water Right

Arising Under State Law identified in Article III.G.3.b that is equal to the quantity of water established as the annual FIIP quota for the current irrigation season, or an equivalent farm delivery amount within the FIIP as implemented by the Project Operator within the applicable RDA Area, or the quantity allowed under a claim decreed by the Montana Water Court or water right granted by the DNRC (an Alternate Value), whichever is less, whose owner enters into a consensual agreement as described in this Article III.G.3.

b. Water Rights Arising Under State Law whose owners are eligible to enter into consensual agreements as described in this Article III.G.3 are those rights:

i. whose purpose is irrigation;

ii. whose point(s) of diversion or place(s) of use are within the FIIP Influence Area; and

iii. whose source of supply is surface water; or

iv. whose source of supply is Groundwater and whose flow rate is greater than 100 gallons per minute.

c. The Tribes, the United States, and the Project Operator, agree to enter into the consensual agreement described in this Article III.G.3 with every owner of a Water Right Arising Under State Law described in Article III.G.3.b who wishes to enter into such an agreement. The following conditions shall apply to any such consensual agreement:

i. the owner of a Water Right Arising Under State Law that meets the criteria described in Article III.G.3.b shall measure all diversions, report the measured amount of those diversions to the Project Operator, agree to divert no more water each year than the lesser of the quantity established as the annual FIIP quota or an Alternate Value, and shall not expand water use beyond the terms of the agreement;

ii. the owner of a Water Right Arising Under State Law does not acquire any entitlement to any delivery or diversion of water from the FIIP, whether the water is stored or run of the river, by entering into a consensual agreement as described in this Article III.G.3;

iii. irrigation use pursuant to any Water Right Arising Under State Law whose owner enters into a consensual agreement as set forth in this Article III.G.3 shall be limited to the irrigation season identified annually by the FIIP and to such period of use limitation as may apply to FIIP irrigators;

iv. the method and frequency of measurement of the diversion must be described and occur at a reasonable level of accuracy and frequency to demonstrate that the diversion does not exceed the lesser of the annual FIIP quota for a given irrigation season or an Alternate Value; and

v. the agreement is permanent and is binding on the heirs and assigns of the owner of each Water Right Arising Under State Law who enters into such agreement.

d. The entering into a consensual agreement as set forth in this subsection (3) does not relieve the owner of any claim to a Water Right Arising Under State Law that is at issue in the Montana general stream adjudication from the obligation of prosecuting that water right claim through the Montana general stream adjudication.

e. If a consensual agreement is entered into among the Tribes, United States, the Project Operator and the owner of a Water Right Arising Under State Law described in Article III.G.3.b prior to the issuance of the final decree for Montana Water Court Basin 76L and 76 LJ, as applicable, that agreement shall terminate as a matter of law if the claimed Water Right is terminated as a result of proceedings conducted in the Montana general stream adjudication.

f. If a consensual agreement is entered into among the Tribes, the United States, the Project Operator, and the owner of a Water Right Arising Under State Law described in Article III.G.3.b prior to the issuance of the final decree for Montana Water Court Basin 76L and 76 LJ, as applicable, and such owner has a claim in the Montana general stream adjudication that is ultimately decreed a quantity of water for that claim less than the quantity established in the agreement, the consensual agreement shall protect only the lesser amount of water.

g. If the owner of a Water Right Arising Under State Law described in Article III.G.3.b ceases to use that portion of that water right in excess of the lesser of the annual FIIP quota for a given irrigation season, or an Alternate Value, pursuant to a consensual agreement as set forth in Article III.G.3:

i. that nonuse does not represent an intent by the owner of that water right to wholly or partially abandon that water right or to not comply with the terms and conditions of that right; and

ii. the period of nonuse may not create or may not be added to any previous period of nonuse to create a presumption of abandonment.

h. Any use of a Water Right Arising Under State Law subject to a consensual agreement described in this Article III.G.3 exceeding the volume of water specified in the consensual agreement shall be subject to Call by the Tribes, the United States, or the Project Operator for that amount of water in excess of the terms of the consensual agreement.

i. A Person who has both an entitlement to the delivery of water from the FIIP and a Water Right Arising Under State Law to serve the same acreage may only protect from Call, by entering into a consensual agreement pursuant to this Article III.G.3, a total quantity of water equal to the lesser of the annual FIIP quota for a given irrigation season, or an Alternate Value, for each acre served, irrespective of whether the water applied to each acre is pursuant to that Person's FIIP delivery right or that Person's Water Right Arising Under State Law.

4. Water Rights Upstream of the Reservation (Basins 76I, 76J, and 76LJ). The Tribes, on behalf of themselves and the users of any portion of the Tribal Water Right set forth in this Compact, and the United States agree to relinquish their right to exercise the Tribal Water Right to make a Call against any water right located upstream of the Flathead Reservation in Basins 76I, 76J, and 76LJ, except for those Water Rights Arising Under State Law:

a. Whose purpose is irrigation and whose source of supply is surface water, and whose point of diversion is:

i. the mainstem of the Flathead River, including Flathead Lake;

ii. the North Fork of the Flathead River;

iii. the Middle Fork of the Flathead River; or

iv. the South Fork of the Flathead River.

b. Whose purpose is irrigation, whose source of supply is Groundwater connected to one of the sources identified in Article III.G.4.a, and whose flow rate is greater than 100 gallons per minute.

c. The Tribes and the United States agree that the Tribal Water Right recognized in the Compact may not be exercised to make Call against any Water Right Arising Under State Law upstream of the Flathead Reservation and located on a tributary to the Flathead River not identified in Article III.G.4.a.

5. Water Rights on the Little Bitterroot River Outside the Reservation (Basin 76L). The Tribes, on behalf of themselves and the users of any portion of the Tribal Water Right set forth in this Compact, and the United States agree to relinquish their right to exercise the Tribal Water Right to make a Call against any Water Right Arising Under State Law whose point of diversion is outside the Flathead Reservation and whose source of supply is the Little Bitterroot River or its tributaries.

6. Any Water Right Arising Under State Law the purpose of which is irrigation and that is susceptible to Call by the Tribes pursuant to Article III.D.1.g, III.D.2.e, III.D.3.e, III.D.5.a.iv, III.D.7.e, III.G.4.a, or III.G.4.b whose purpose is changed after the Effective Date to something other than irrigation shall remain susceptible to Call pursuant to the terms and conditions of this Compact as though the purpose of the Water Right Arising Under State Law was still irrigation.

H. Water Rights Arising Under State Law Appurtenant to Lands Acquired by the Tribes. For lands acquired by the Tribes within the Reservation, the Tribes have the right to any Water Right Arising Under State Law acquired as an appurtenance to the land. Starting upon the Effective Date of the Compact, the Tribes may file a Trust Transfer form with the Board for any lands acquired by the Tribes with appurtenant Water Rights Arising Under State Law that have been taken into trust by the United States on behalf of the Tribes, as provided in the Law of Administration and the water right appurtenant to the land shall be transferred to the Tribal Water Right quantified in this Compact with a priority date of July 16, 1855, provided that the Tribes shall continue to use the acquired water right as it was historically used or may change the use of the acquired water right pursuant to the provisions for change of use set forth in Article IV.B.4 and the Law of Administration. Such transfer does not shield the underlying right from abandonment based on acts or omissions of the holder of that water right prior to its acquisition by the Tribes.

ARTICLE IV - IMPLEMENTATION OF COMPACT

A. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust by the United States for the benefit of the Tribes, their members and Allottees.

B. Use of Tribal Water Right.

1. Persons Entitled to Use the Tribal Water Right. The Tribal Water Right may be used by the Tribes, their members, Allottees, or their lessees or assigns. FIIP customers who have assessed land within the FIIP who are in compliance with the applicable BIA rules and guidelines are entitled to have delivered an equitable share of the FIIP Water Use Right as provided by Article IV.D.2.

2. Effect of Non-Use of the Tribal Water Right. Non-use of all or any portion of the Tribal Water Right described in Article III shall not constitute a relinquishment, forfeiture, or abandonment of such right.

3. Review of Registration of Existing Uses of the Tribal Water Right.

a. Within five (5) years after the Effective Date, the Board shall provide the DNRC with a report, in a form materially consistent with that of abstracts of water rights decreed by the Montana Water Court, of the Tribal Water Right registered pursuant to the Law of Administration as being in existence as of the Effective Date.

b. Within six (6) months after receipt of the report, the DNRC must agree, agree in part, or disagree with the report. If the DNRC takes no action by the end of the six-month period after the report is received, the report shall be deemed accepted. If the DNRC agrees in part or disagrees with the report, the State, the Tribes, and the United States shall meet within ninety (90) days of issuance of the DNRC's notice of disagreement in an effort to resolve the issue(s) giving rise to the disagreement. If, after meeting and conferring, the State, the Tribes, and the United States are still unable to come to agreement on the list of Existing Uses, all disagreements over the contents of the list must be brought to the Water Management Board for resolution of the dispute under Article IV.I.4.c within 180 days of the issuance of the DNRC's notice of disagreement.

4. Changes in Use of the Tribal Water Right. Any user of a portion of the Tribal Water Right who proposes a change of such use must seek authorization to change the use of that portion of the right. Such applications for authorization to change a use shall be heard and decided by the Board pursuant to Article IV.I.4.b of the Compact and the Law of Administration, provided that the Board may not consider any change application of Flathead System Compact Water unless the applicant has secured the written consent of the Tribal Council to apply for a Change in Use authorization.

5. New Development of the Tribal Water Right.

a. The Tribes, or any Person with authorization from the Tribes, may develop a new use of the Tribal Water Right on the Reservation after the Effective Date. Such development may only proceed upon the issuance of an Appropriation Right for the New Development by the Board pursuant to Article IV.I.4.a and the Law of Administration.

b. The Tribes, or any Person with authorization from the Tribes, may develop a new use of the Flathead System Compact Water Right set forth in Article III.C.1.c off the Reservation after the Effective Date, but only after complying with the provisions of Article IV.B.5.c.

c. Any New Development by the Tribes of a portion of the Tribes' Flathead System Compact Water Right off the Reservation shall be treated as a change in use. The DNRC shall process each change application pursuant to the provisions of 85-2-302, 85-2-307 through 85-2-310, and 85-2-314, MCA. Prior to developing Flathead System Compact Water for beneficial use off the Reservation, the Tribes must comply with the provisions of subsections (1) through (3) and (8) through (17) of 85-2-402, MCA, as those provisions read on December 31, 2014.

d. In the event that, after the date the ratification of the Compact by the Montana Legislature takes effect under State law, the Montana Legislature substantively amends or repeals any of the sections identified in Article IV.B.5.c, the Tribes and the DNRC shall meet no later than 60 days after the effective date of the State legislative action amending or repealing to determine if they can agree whether the provisions of State law set forth in Article IV.B.5.c or the new provisions of State law shall govern the process for off-Reservation development of new uses of the Flathead System Compact Water Right set forth in Article III.C.1.c. In the event that the Tribes and the DNRC are unable to agree, the provisions of State law identified in Article

IV.B.5.c shall remain in effect. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

e. If the Tribes' use of Flathead System Compact Water off the Reservation involves diversion works or facilities for the transport of water located off the Reservation, the Tribes shall apply for and obtain all permits, certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water, prior to exercising a use of the Flathead System Compact Water Right off the Reservation.

6. Lease of the Tribal Water Right.

a. Lease of the Tribal Water Right generally.

i. Pursuant to the terms and conditions of this Compact, the Tribes may Lease, for use on or off the Reservation, any portion of the Tribal Water Right set forth in Article III.C.1.a, b, i, and j; provided, that either the Tribes or its assignee, on behalf of the Tribes, first comply with the procedures for changing the use of water rights set forth in subsections iii and iv of this Article IV.B.6.a, as applicable.

ii. The Tribes may make or authorize a Lease of the Tribal Water Right for use within or outside the Reservation; provided that, any Lease shall be for a term not to exceed 99 years, and may include provisions authorizing renewal for an additional term not to exceed 99 years. The off-Reservation use of any portion of the Tribal Water Right is limited to a place of use within the Flathead or Clark Fork River Basins in Montana.

iii. A Lease of the Tribal Water Right shall not adversely affect a Water Right Arising Under State Law with a priority date before the date of the Lease or an Appropriation Right issued pursuant to this Compact with a priority date before the date of the Lease. Uses of the Tribal Water Right being exercised prior to the date of the Lease shall not be adversely affected by a Lease of the Tribal Water Right, except that the Tribes may allow uses of the Tribal Water Right on Tribally owned land to be adversely affected by declining to object to the Change in Use application associated with the Lease.

1. If the Lease is for use on the Reservation, the determination of adverse effect shall be made by the Water Management Board pursuant to the process set forth regarding applications for Change in Use authorizations under the Law of Administration.

2. If the Lease is for use off the Reservation, the Lease shall be treated as a change in use. The DNRC shall process each change application pursuant to the provisions of 85-2-302, 85-2-307 through 85-2-310, and 85-2-314, MCA. Prior to the lessee putting leased water to beneficial use, the Tribes or their assignee, on behalf of the Tribes, must comply with the following provisions of State law as those provisions read on December 31, 2014:

a. Subsections (1) through (3) and (8) through (17) of 85-2-402, MCA;

b. Subsections (1) through (8) of 85-2-407, MCA, provided, that the term of any such Lease may be for up to 99 years, and the DNRC may approve the renewal of such a Lease for a period of up to 99 years; and

c. 85-2-408, MCA, as limited by the provisions of Article IV.B.6.a.iii.2.a.

iv. In the event that, after the date the ratification of the Compact by the Montana Legislature takes effect under State law, the Montana Legislature substantively amends or repeals any of the sections identified in Article IV.B.6.a.iii.2, the Tribes and the DNRC shall meet, no later than 60 days after the effective date of the State legislative action amending or repealing, to determine if they can agree whether the provisions set forth in Article IV.B.6.a.iii.2 or the new provisions of State law shall govern the process for off-Reservation Leases under this Compact. In the event that the Tribes and the DNRC are unable to agree, the provisions of Article IV.B.6.a.iii.2 shall remain in effect. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

v. The Tribes or any Person using diversion works or facilities for the transportation of water located off the Reservation in connection with a use of the Tribal Water Right shall apply for and obtain all permits, certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, or facility proposed to use or transport water, prior to exercising a use of the Tribal Water Right off the Reservation.

b. Lease of the Tribal Water Right by an Individual Indian Owner.

i. An Individual Indian Owner may enter into a Lease to authorize a Person or Persons to use the Individual Indian Owner's allocated portion of the Tribal Water Right on the Reservation.

ii. If the lessee intends to put the water to beneficial use in a manner different than how the Individual Indian Owner had been using the water prior to the date of the Lease, the Individual Indian Owner or the lessee must comply with the provisions of the Law of Administration pertaining to securing Change in Use authorizations from the Water Management Board before the use of water may be changed.

iii. Any Lease entered into pursuant to subsection b of this section may be for a term not to exceed 25 years, and may include provisions authorizing renewal for an additional term not to exceed 25 years.

iv. A Lease of the Tribal Water Right by an Individual Indian Owner shall not adversely affect a Water Right Arising Under State Law with a priority date before the date of the Lease or an Appropriation Right issued pursuant to this Compact with a priority date before the date of the Lease. Uses of the Tribal Water Right being exercised prior to the date of the Lease shall not be adversely affected by a Lease of the Tribal Water Right by an Individual Indian Owner, except that the Tribes may allow uses of the Tribal Water Right on Tribally owned land to be adversely affected by declining to object to the Change in Use application associated with the Lease.

c. Lease of the Flathead System Compact Water Right.

i. Pursuant to the terms and conditions of this Compact, the Tribes may Lease Flathead System Compact Water for use on or off the Reservation, provided that either the Tribes or their lessee comply with the Law of Administration and the relevant provisions of this section, as applicable.

ii. The Tribes shall make available Flathead System Compact Water for short-term Lease within the FIIP or the FIIP Influence Area pursuant to the Shared Shortages provisions set forth at Article IV.E. The Lease term may not exceed the period during which Shared Shortage provisions are in effect. The baseline annual price for this water shall be $8 per Acre-foot plus a $25 administrative fee per Lease as of July 1, 2015. From that date, the baseline annual price and the administrative fee shall be indexed for inflation and consequently adjusted annually on July 1st of each successive year thereafter (the Adjustment Date) by the percentage change over the previous twelve months in the most recent monthly Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Department of Labor, Bureau of Labor Statistics, or such other index as the Parties may agree to use. The initial price for each Lease of any portion of the Flathead System Compact Water entered into during that year pursuant to the Shared Shortage provisions contained in Article IV.E shall be the adjusted baseline price. During the term of any given Lease, the price per Acre-foot shall continue to adjust annually on the Adjustment Date by the percentage change in the CPI-U, or such other index as the Parties may agree to use, of the previous twelve-month period. The foregoing provisions regarding the adjusted baseline price and per-Lease administrative fee shall constitute the sole and exclusive price terms of each Lease entered under this Article IV.B.6.c.ii. Any modifications of the index are pursuant to, and shall not be deemed an amendment of, this Compact.

iii. The Tribes may make or authorize a Lease of the Tribal Water Right for use within or outside the Reservation; provided that, any Lease shall be for a term not to exceed 99 years, and may include provisions authorizing renewal for an additional term not to exceed 99 years. The off-Reservation use of any portion of the Tribal Water Right is limited to a place of use within the Flathead or Clark Fork River Basins in Montana.

iv. If the Lease is for a portion of the Tribes' Flathead System Compact Water right to be delivered wholly from water stored in Hungry Horse Reservoir, the Tribes shall provide notice to the DNRC and the Water Management Board, in advance of the effective date of the Lease, of the terms of the Lease and any modifications thereto or termination thereof. For Leases lasting one irrigation season or less, notice to the DNRC and the Water Management Board shall be provided as far in advance as practicable. For Leases lasting longer than one year, notice shall be provided to the DNRC and the Water Management Board by the later of 120 days prior to the date on which the Lease is to take effect or March 31 of the year in which the Lease is to take effect. The point of delivery for a Lease shall be the outlet works at the Hungry Horse Dam.

If disputes arise between or among holders of Water Rights Arising Under State Law as to the reasonable transmission and carriage losses from the point of delivery to the place of use of the Lease, the district court pursuant to its powers and duties under Title 85, Chapter 5, MCA, shall calculate such losses.

v. Any Lease or portion of a Lease to be delivered from water stored in Hungry Horse Reservoir is subject to reduction due to conditions defined in Appendix 8 on a pro rata basis as set forth in Article III.C.1.c.iii.

vi. If the Lease is for the off-Reservation use of a portion of the Tribes' Flathead System Compact Water right to be delivered from a combination of stored water and direct flow water from the Flathead River, or exclusively from direct flow water from the Flathead River, the Lease shall be treated as a change in use as it pertains to the use of the direct flow water. The DNRC shall process each change application pursuant to the provisions of 85-2-302, 85-2-307 through 85-2-310, and 85-2-314, MCA. Prior to the lessee putting leased water to beneficial use, the Tribes or the lessee must comply with the following provisions of State law as those provisions read on December 31, 2014:

1. Subsections (1) through (3) and (8) through (17) of 85-2-402, MCA;

2. Subsections (1) through (8) of 85-2-407, MCA, provided, however, that the term of any such Lease may be for up to 99 years, and the DNRC may approve the renewal of such a Lease for a period of up to 99 years; and

3. 85-2-408, MCA, as limited by the provisions of Article IV.B.6.c.vi.1.

vii. In the event that, after the date the ratification of the Compact by the Montana Legislature takes effect under State law, the Montana Legislature substantively amends or repeals any of the sections identified in Article IV.B.6.c.vi.1 through 3, the Tribes and the DNRC shall meet no later than 60 days after the effective date of the State legislative action amending or repealing to determine if they can agree whether the provisions set forth in Article IV.B.6.c.vi.1 through 3 or the new provisions of State law shall govern the process for off-Reservation Leases under this Compact. In the event that the Tribes and the DNRC are unable to agree, the provisions of Article IV.B.6.c.vi.1 through 3 shall remain in effect. Any agreed upon modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

viii. The Tribes or any Person using diversion works or facilities for the transportation of water located off the Reservation in connection with a use of the Flathead System Compact Water Right shall apply for and obtain all permits, certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, or facility proposed to use or transport water, prior to exercising a use of the Flathead System Compact Water Right off the Reservation.

7. Lease of 11,000 Acre-Feet per Year of Water From Hungry Horse Reservoir for Off-Reservation Mitigation.

a. The Tribes shall make available for Lease off the Reservation 11,000 Acre-feet of the water identified in Article III.C.1.c.i stored in Hungry Horse Reservoir pursuant to the process, and subject to the terms and conditions, set forth in this Article IV.B.7.

b. The water identified in Article IV.B.7.a shall be available for the mitigation of net depletions arising from new or existing domestic, commercial, municipal and/or industrial uses of water at any point in the Flathead or Clark Fork Basins in Montana for which the 11,000 Acre-feet per year of water is capable of providing mitigation.

c. The DNRC, under Title 85, MCA, shall retain the responsibility for determining if, when, where, and how much mitigation water is needed for any proposed new development and if the water identified in Article IV.B.7.a meets the appropriate mitigation criteria for any proposed mitigation plan.

d. The water identified in Article IV.B.7.a is subject to reduction due to conditions defined in Appendix 8 on a pro rata basis as set forth in Article III.C.1.c.iii.

e. The mechanism for entering into a Lease for any portion of the water set forth in this Article IV.B.7.a shall be as follows:

i. Any interested Person may approach the Tribes, through the Tribal Lands Department or successor Tribal department, to negotiate a Lease of a portion of this water;

ii. The baseline annual per Acre-foot price for this water shall be set at $40 as of July 1, 2015. From that date, the baseline price shall be indexed for inflation and consequently adjusted annually on July 1st of each year thereafter (the Adjustment Date) by the percentage change over the previous year in the most recent monthly Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Department of Labor, Bureau of Labor Statistics, or such other index as the Parties may agree. The initial price for each Lease of any portion of the 11,000 Acre-feet identified in this Article IV.B.7 entered into during that year shall be the adjusted baseline price. During the term of any given Lease, the price per Acre-foot shall continue to adjust annually on the Adjustment Date by the percentage change in the CPI-U, or such other index as the Parties may agree to use, of the previous twelve-month period. The foregoing provisions regarding the adjusted baseline price shall constitute the sole and exclusive price term of each Lease;

iii. Each Lease between the Tribes and a lessee shall be for a term of 99 years, with the lessee holding an option to renew for an additional 99 years, unless the Tribes and the lessee affirmatively agree on an alternate duration not to exceed 99 years. Any Lease including a term of alternate duration may also include an option to renew for a term not to exceed 99 years; and

iv. The Tribes and each prospective lessee shall negotiate any and all other non-price terms of the Lease arrangement.

f. In the event of an impasse between the Tribes and a prospective lessee over any non-price term, the prospective lessee may file a notice of impasse with the Water Management Board, invoking the Board's authority to resolve any such impasse pursuant to the process set forth in Article IV.B.7.g.

g. Process for resolving disputes over Lease terms.

i. Upon receipt of a notice of impasse, the Board shall date stamp it. Within three days of the filing of a notice of impasse, the Board shall provide notice of the filing to the Tribes, with a copy to the prospective lessee, identifying a date certain between 30 and 60 days from the date of receipt of the notice for the Tribes and the prospective lessee each to submit a last, best offer concerning all of the non-price terms.

ii. No later than the date set by the Board, the Tribes and the prospective lessee shall file a last, best offer with the Board in the form of a proposed Lease agreement and shall serve the same on each other. To be filed, the offer must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the offers shall be date stamped. If the Tribes fail to timely file an offer, the offer filed by the prospective lessee shall become the terms of the Lease. If the prospective lessee fails to timely file an offer, no Lease shall be concluded.

iii. The Board shall issue a decision selecting one side's offer or the other's between 15 and 45 days after the filing of the offer. At any time prior to the Board's decision, the prospective lessee may choose to withdraw the prospective lessee's offer and decline to enter into the Lease.

iv. The Board shall provide notice of its decision to both the Tribes and the prospective lessee. The Lease shall be concluded on the terms selected by the Board, but must include the price term identified in Article IV.B.7.e.ii of this Compact. The effective date of the Lease shall be ten days after the Board's issuance of its decision.

v. The Tribes or a prospective lessee dissatisfied with a decision of the Board made pursuant to this Article IV.B.7.g may appeal that decision by filing a petition for judicial review with a Court of Competent Jurisdiction within 30 days of the issuance of the Board's decision. The court shall review the Board's decision for abuse of discretion.

C. Exercise of Certain Portions of the Tribal Water Right Related to the FIIP.

1. Priority for the Exercise of the FIIP Instream Flow and FIIP Water Use Rights. Once the water rights described in Article III.C become enforceable, the following relative priorities among those rights shall apply:

a. Minimum Enforceable Instream Flows.

b. Minimum Reservoir Pool Elevations.

c. River Diversion Allowances.

d. Target Instream Flows.

2. Reallocated Water in excess of Target Instream Flows will be split as equally as hydrologically practicable between the Instream Flow water rights set forth in Article III.C.1.d.ii and the FIIP Water Use Right set forth in Article III.C.1.a.

3. MEF and TIF implementation and schedule. Exercise of FIIP Instream Flow Rights set forth in Article III.C.1.d.ii shall be accomplished through the implementation and enforcement of MEFs and TIFs and is subject to the Shared Shortage and Adaptive Management provisions set forth in Article IV.E and F and Appendix 3.5.

a. MEFs and TIFs shall be enforceable at the values set forth in Appendix 3.1.

b. Implementation and enforceability of MEFs and TIFs.

i. Incremental implementation of Operational Improvements will result in additional FIIP Instream Flow.

ii. MEFs and TIFs shall be enforceable following the completion of Operational Improvements according to the schedule attached hereto as Appendix 3.4.

iii. Reallocated Water from Rehabilitation and Betterment Projects shall be used to incrementally achieve FIIP Instream Flows set forth in Article III.C.1.d.ii.

iv. If the schedule attached hereto as Appendix 3.4 cannot be met due to lack of available funding or other circumstances outside of the control of the Parties or Project Operator, the Parties may agree to adjust the schedule as necessary to allow for timely implementation of MEFs and TIFs. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

v. If the Project Operator fails to implement the schedule attached hereto as Appendix 3.4 due to acts, errors, or omissions of the Project Operator, MEFs and TIFs will be enforceable as though the schedule had been implemented.

c. Until an MEF has become enforceable, the interim Instream Flow, where applicable, for that location shall be the enforceable Instream Flow. Where the Instream Flow has been incrementally increased above the interim Instream Flow level as a result of the partial completion of actions listed in the Implementation Schedule attached hereto as Appendix 3.4, the incrementally achieved level may be maintained until the MEF is achieved.

d. Until a Minimum Reservoir Pool Elevation has become enforceable, the interim reservoir pool elevation, where applicable, for that location shall be enforced.

e. TIFs shall be determined seasonally according to Appendix 3.5, and will vary between the wet and normal year levels attached hereto as Appendix 3.1.

4. Minimum Reservoir Pool Elevations. Minimum Reservoir Pool Elevations attached hereto as Appendix 3.1 shall be enforceable according to the schedule specified in Appendix 3.4. Enforceability of Minimum Reservoir Pool Elevations is subject to Article IV.E, Appendix 3.5, and superseding Federal law allowing for regulation of reservoir elevations.

D. Exercise of the FIIP Water Use Right.

1. FIIP Water Use Right.

a. The FIIP Water Use Right shall be satisfied by meeting the RDA values for each RDA Area attached hereto as Appendix 3.2 and as evaluated pursuant to Article IV.D.1.e.

b. RDAs shall be enforceable according to the schedule attached hereto as Appendix 3.4, subject to evaluation pursuant to Article IV.D.1.e.

c. Headworks diversion amounts shall be progressively adjusted to achieve the RDAs as Operational Improvements are completed pursuant to Appendix 3.4.

d. Once RDAs are achieved through completion of Operational Improvements, headworks diversion amounts shall be progressively adjusted as Rehabilitation and Betterment is completed pursuant to Appendix 3.6. The enforceable RDA for the location in which a particular Rehabilitation and Betterment project has been completed is the amount defined in Appendix 3.2, reduced by the volume of Reallocated Water made available by that Rehabilitation and Betterment project. The amount actually diverted may be adjusted pursuant to the evaluation process described in Article IV.D.1.e.

e. RDA values shall be evaluated to ensure their adequacy to meet Historic Farm Deliveries. Initial evaluation of RDAs shall occur once the Parties and Project Operator have completed all Operational Improvements in a given RDA Area according to the schedule attached hereto as Appendix 3.4. Evaluation of RDAs will continue as part of the responsibilities of the CITT described in Appendix 3.5 as follows:

i. The Project Operator must measure and record farm turnout deliveries within a given RDA Area.

ii. If the aggregate measured deliveries to farm turnouts do not meet Historic Farm Deliveries for a given RDA Area, actual diversions shall be adjusted to assure that Historic Farm Deliveries are met for wet, normal and dry water years. If water in excess of the RDA is needed to meet Historic Farm Deliveries, it will be provided through an increase of the Flathead River pumping plant diversion allowed by the Flathead Pumping Station RDA attached hereto as Appendix 3.2. If the aggregate measured deliveries to farm turnouts exceed Historic Farm Deliveries within an RDA Area, the actual diversions shall be reduced accordingly.

iii. Any adjustment of actual diversions pursuant to this section shall not result in decrease of the MEFs, TIFs, or Minimum Reservoir Pool Elevations.

f. RDAs are quantified for wet, normal, and dry Natural Flow years, attached hereto as Appendix 3.2, and shall be set each year according to the process specified in Appendix 3.5.

2. FIIP Delivery Entitlement Statement. Assessed land within the FIIP is entitled to have water delivered by the Project Operator if the FIIP customer is in compliance with the applicable BIA rules and guidelines for FIIP. Beginning on the Effective Date, an owner of assessed land within the FIIP may request of the Project Operator a delivery entitlement statement, which must be tendered within 90 days of the request or denied for cause. Beginning on the date one year after the Effective Date, the delivery entitlement statement must be tendered or denied within 30 days. The delivery entitlement runs with the land and is valid so long as the land remains assessed and the FIIP customer is in compliance with the applicable BIA rules and guidelines for FIIP.

E. Shared Shortages Provision.

1. In the event that water supplies are inadequate to simultaneously satisfy an enforceable Instream Flow water right and a corresponding RDA, the provisions of Article IV.E govern the exercise of the water rights set forth in Articles III.C.1.a and III.C.1.d.ii and iv at that location. The CITT shall determine when Shared Shortages conditions begin and end as specified in Appendix 3.5.

2. For purposes of Article IV.E, once MEFs and RDAs have become enforceable, they shall be maintained at the levels set forth in Appendices 3.1 and 3.2, as adjusted pursuant to Article IV.D.1.e. Prior to enforceability of the MEF and RDA levels attached hereto as Appendices 3.1 and 3.2, Instream Flows will be maintained as provided by Article IV.C.3.c and RDAs will be maintained as provided by Article IV.D.1.b and c.

3. Subject to the priority system set forth in Article IV.C.1, RDAs shall be maintained by implementing the following measures in the order of priority set forth below:

a. Available Natural Flow or regulated streamflow shall be diverted by the Project Operator to satisfy RDAs.

b. If the application of Article IV.E.3.a does not satisfy RDAs, Flathead River pumping plant diversions shall be increased as allowed by the Flathead Pumping Station RDA attached hereto as Appendix 3.2.

c. If the application of Article IV.E.3.a and b does not satisfy RDAs, FIIP reservoirs may be reduced below the Minimum Reservoir Pool Elevations specified in Appendix 3.1 to supply RDAs, subject to Article IV.E.5.

d. If the application of Article IV.E.3.a through c does not satisfy RDAs, the Tribes shall make available for short-term lease Flathead System Compact Water for use within the FIIP as provided by Article IV.B.6.c.ii.

4. Within the Basin 76LJ portion of the Little Bitterroot Valley, RDAs shall be maintained by sequentially applying the procedures in Article IV.E.3.a through c, where applicable.

5. As set forth in Article IV.E.3.c, FIIP reservoirs may be reduced below the Minimum Reservoir Pool Elevations set forth in Article III.C.1.e to support RDAs as follows:

a. FIIP reservoirs may be reduced pursuant to this section for no more than four consecutive years.

b. Article IV.E.3.c does not apply to Mission Reservoir.

c. FIIP reservoirs may not be reduced below the interim reservoir pool elevations set forth in Article III.C.1.e.iv and attached hereto as Appendix 13.

d. RDAs may be met from carryover reservoir storage, at the discretion of the Project Operator.

F. Requirement to Implement Adaptive Management and Water Measurement.

1. The Parties agree that Adaptive Management and a comprehensive water measurement program, as described in Appendix 3.5, are essential to the successful implementation of this Compact.

2. The Parties, upon mutual written agreement, and in conformance with the Compact and other applicable provisions of law, may amend Appendix 3.5. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

G. Compact Implementation Technical Team. Within six months of the date the ratification of the Compact by the Montana Legislature takes effect under State law, the Parties shall establish a Compact Implementation Technical Team (CITT) to allow planning for and implementation of Operational Improvements, Rehabilitation and Betterment, and Adaptive Management prior to and following the Effective Date.

1. The CITT membership shall be as provided for in Appendix 3.5.

2. The CITT shall carry out the duties specified by Appendix 3.5.

3. The CITT shall develop criteria for prioritizing and selecting projects.

4. Public Meetings and Records:

a. All regularly scheduled meetings of the CITT shall be open to the observation of the general public pursuant to State and Tribal open meeting laws. Where there is a conflict of laws, the law that provides for greater openness to the public applies.

b. CITT records are public records and shall be made available to the public for inspection under such reasonable terms and conditions as the CITT shall establish.

5. Disputes Related to the Compact Implementation Technical Team. The Parties agree to perform each obligation set forth in this Compact in good faith and with diligence and loyalty to this agreement. The Parties shall form a Compact Management Committee (CMC) comprised of the Director of the Montana Department of Natural Resources, the Chairman of the Tribal Council, and the Regional Director of the Northwest Region of the Bureau of Indian Affairs or their designees. The CMC will provide policy and administrative oversight of the CITT.

a. The CITT shall attempt to reach consensus on all of its actions.

b. Where consensus is not achieved, the CITT will resolve disputed issues by majority vote.

c. If the CITT vote results in a tie, or is appealed, the disputed issue will be referred to the CMC. The CMC will review and attempt to reach consensus on the disputed issue and if consensus is not possible, will resolve the issue by majority vote.

d. A majority vote of the CMC may be appealed using the following procedures:

i. Disputes arising out of any act, failure to act, error or omission of the BIA or Project Operator involving Operational Improvements or Rehabilitation and Betterment or otherwise affecting real property owned by the United States may be appealed under Title 25, Part 2, Code of Federal Regulations.

ii. For disputes raising questions of Compact interpretation, the CMC shall immediately seek a determination of those questions from the Water Management Board, which determination will be provided in writing within 30 days.

iii. All other disputes may be appealed to a Court of Competent Jurisdiction. In considering a petition for relief, a Court of Competent Jurisdiction will review the CMC's legal conclusions for correctness and its factual findings for abuse of discretion.

H. Power Provisions

1. Low-Cost Block of Power

The Parties recognize that Article 40 of the Kerr Project License, as amended, jointly issued to the Montana Power Company and the Tribes for the Kerr Project, Project No. 5, requires Montana Power Company, through its successor-in-interest, NorthWestern Energy, to make available the capacity and energy up to 3.734 megawatts at up to 100 percent load factor during the months of April through October to the United States, for and on behalf of the FIIP, at the rates set forth in and adjusted in accordance with such Article.

The Parties agree that the Kerr Project License Article 40 Low Cost Block of Power is equivalent to the delivery of 19,178,000 kilowatt hours of electricity per year, and generally supplies electricity necessary to pump approximately 46,000 Acre-feet of water per year to the FIIP. If the operation and maintenance, and all other rights and responsibilities for the Kerr Project are assumed by the Tribes or their wholly-owned corporation, the Tribes agree, to the extent permitted under applicable license(s) and Federal law, to make the Low Cost Block of Power available in the same manner and at the same rates, as adjusted, as NorthWestern Energy. If the Tribes seek a new license for the Kerr Project, the Tribes or their wholly-owned corporation, agree that their license application will request authority from FERC to make the Low Cost Block of Power available in the same manner and at the same rates, as adjusted, as NorthWestern Energy.

2. Net Power in Excess of Low Cost Block

For purposes of Article IV.E, power required to run the Flathead Pumping Station in excess of the Low Cost Block of Power identified in Article IV.H.1 shall be purchased at the price at which Mission Valley Power sells power for irrigation purposes.

3. Net Power Revenues

The State and Tribes agree to seek provisions in the Federal legislation ratifying this Compact for Mission Valley Power to budget annually for an anticipated amount of $200,000 of Net Power Revenues to be made available in the subsequent year to meet the needs of both the power system and the FIIP with an initial allocation of the Net Power Revenue that provides fifty percent to the Project Operator and fifty percent to the Tribes. These funds shall only be used for work on the FIIP that has significant fisheries, water conservation, or water management benefits. If on an annual basis such work by the Project Operator or the Tribes does not require the full amount of such net revenues the remainder shall be set aside and accumulated for future expenditure for these purposes. This initial allocation may be changed by mutual agreement of the Parties within nine (9) years of the Effective Date, with any subsequent agreement to become effective on the tenth (10th) anniversary of the Effective Date. Any such modification is pursuant to, and shall not be deemed an amendment of, this Compact.

I. Administration: Establishment of Flathead Reservation Water Management Board.

1. Establishment of Board. There is hereby established the Flathead Reservation Water Management Board. Upon the Effective Date, the Board shall be the exclusive regulatory body on the Reservation for the issuance of Appropriation Rights and authorizations for Changes in Use of Appropriation Rights and Existing Uses, and for the administration and enforcement of all Appropriation Rights and Existing Uses. The Board shall also have exclusive jurisdiction to resolve any controversy over the meaning and interpretation of the Compact on the Reservation, and any controversy over the right to the use of water as between the Parties or between or among holders of Appropriation Rights and Existing Uses on the Reservation except as explicitly provided otherwise in Article IV.G.5. The jurisdiction of this Board does not extend to any water rights whose place of use is located outside the exterior boundaries of the Reservation.

2. Membership.

a. Voting Members. The Board shall consist of five voting members: two members selected by the Governor of the State pursuant to Article IV.I.2.b, after consultation with holders of Water Rights Arising Under State Law located on the Reservation; two members appointed by the Tribal Council; and one member selected by the other four members. All members shall be appointed within six months of the Effective Date.

b. Appointment by Governor. Within 90 days of the Effective Date, or 15 days of any vacancy in one or more of the Board positions selected by the Governor, the commissioners of each county whose boundaries include any portion of the Reservation shall nominate individuals for the Governor's consideration for appointment to the Board as follows:

i. The Commissioners of Lake County shall choose five (5) nominees;
ii. The Commissioners of Sanders County shall choose three (3) nominees;
iii. The Commissioners of Missoula County shall choose two (2) nominees;
iv. The Commissioners of Flathead County shall choose one (1) nominee; and
v. Each nominee must meet the eligibility requirements of Article IV.I.2.f.

The Governor shall choose two Board members from the group of nominees. If the county commissioners fail to nominate a minimum of seven (7) individuals for selection by the Governor within the time set forth in Article IV.I.2.b, the Governor may select any two individual(s) who meet the eligibility requirements set forth in Article IV.I.2.f after consultation with Holders of Water Rights Arising Under State Law located on the Reservation.

c. Should the four appointed members fail to agree on the selection of a fifth voting member within sixty days of the date of appointment of the fourth member, or within thirty days after any vacancy in that fifth position occurs, the following procedure shall be utilized:

i. Within five days thereafter the two members appointed by the Tribal Council shall nominate three individuals to serve as a member of the Board and the two members appointed by the Governor shall nominate three individuals to serve as a member of the Board;

ii. Within fifteen days thereafter the two members appointed by the Tribal Council shall reject two of the individuals nominated by the two members appointed by the Governor, and the two members appointed by the Governor shall reject two of the individuals nominated by the two members appointed by the Tribal Council; and

iii. Within five days thereafter, the remaining two nominees shall be submitted to the Chief Judge of the United States District Court for the District of Montana for selection of the fifth member of the Board.

d. Ex Officio Member. The Board shall also have a sixth, non-voting member appointed by the Secretary.

e. Term. Initially, three voting members of the Board shall serve for four years, and two shall serve for two years. One member appointed by the Governor, one member appointed by the Tribal Council and the fifth voting member shall serve for four years. One member appointed by the Governor and one member appointed by the Tribal Council shall serve for two years. The member appointed by the Secretary shall be appointed for four years. At the expiration of the initial two-year appointments, all subsequently appointed Board members shall serve four year terms.

f. Eligibility. To be eligible to serve on the Board, an individual must be over 18 years of age and be a Reservation resident. For the purposes of filling a position on the Water Management Board, a Reservation resident is an individual who:

i. does business within Flathead Indian Reservation boundaries;

ii. is domiciled within Flathead Indian Reservation boundaries; or

iii. owns and maintains a seasonal residence within Flathead Indian Reservation boundaries.

An eligible individual must also have education and experience in one or more of the following fields: natural resources management, public administration, agriculture, engineering, commerce or finance, hydrology, biological sciences, water law or water policy.

No elected official of the State of Montana, or any political subdivision thereof, or of the United States, or of the Tribes is eligible for nomination to the Board while holding such elective office. However, a nominee for Board membership shall not be disqualified by reason of the fact that he or she is an employee or contractor of the State of Montana or any political subdivision thereof, or of the Tribes, or of the United States.

No Board member may vote on any application or appeal that the member participated in personally and substantially in any non-Board capacity.

g. Vacancies. Subject to the provisions of Article IV.I.2.a and c regarding the filling of a vacancy of the fifth member of the Board, upon the occurrence of any other vacancy in a Board position, the Tribal Council, if the vacancy is in a position appointed by the Tribal Council, or the Governor, if the vacancy is in a position appointed by the Governor, shall name a new Board member within 30 days of the occurrence of the vacancy. Should Board action be required during the period of any such vacancy, the Department Head of the Tribal Natural Resources Department, if the vacancy is in a position appointed by the Tribal Council, or the Director of the DNRC, if the vacancy is in a position appointed by the Governor, shall fill the vacant position on an acting basis until a new appointment is made.

h. Compensation and Expenses of the Board. Each Board member shall receive such compensation for services and reimbursement for expenses for attendance at Board meetings as shall be fixed by the State and the Tribal Council for the Board members appointed by the same. The compensation for the fifth Board member shall be set jointly by the State and the Tribal Council. The expenses of the Federal ex officio member shall be covered by the United States.

3. Quorum and Vote Required. Four Board members appointed pursuant to Article IV.I.2.a shall constitute a quorum. No Board action may be voted upon in the absence of a quorum. All Board decisions shall be by affirmative vote of a majority of the Board, except as set forth

in Article IV.I.5.d for the appointment of water commissioners. If a proposal put to a vote of a quorum of Board members ends in a tie vote, the proposal is deemed disapproved or denied.

4. Jurisdiction of the Board.

a. Issuance of Appropriation Rights. Upon the Effective Date, the Board shall have exclusive jurisdiction over the issuance of all new Appropriation Rights on the Reservation. The process for the consideration, issuance or denial of all Appropriation Rights is set forth in the Law of Administration.

b. Authorizations for Changes in Use. Upon the Effective Date, the Board shall have exclusive jurisdiction over the issuance of authorizations for Changes in Use of all water rights on the Reservation. The process for the consideration, issuance or denial of such Change in Use authorizations is set forth in the Law of Administration.

c. Enforcement. Upon the Effective Date, the Board shall have the jurisdiction to enforce the terms of this Compact as provided by Article IV.I.1. All controversies cognizable under this subsection shall be heard and resolved pursuant to the Compact and the Law of Administration.

d. Water Right Ownership Updates. The Board shall not have jurisdiction over water right ownership updates on water rights appurtenant to fee lands, which shall remain with the DNRC as set forth in 85-2-421 through 85-2-424, 85-2-426, and 85-2-431, MCA.

5. Powers and Duties.

a. In General. The Board shall have the power to promulgate procedures, prescribe forms, develop additional materials and implement amendments thereto as may be necessary and proper to exercise its jurisdiction and carry out its assigned functions under this Compact and the Law of Administration. A set of forms for initial use by the Board in the implementation of the Law of Administration is attached hereto as Appendix 37. The Board may amend these forms at its discretion. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

b. Hearings. Pursuant to the procedures set forth in the Law of Administration, the Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint technical experts. The Tribes and the State shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribes and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The Persons involved in the controversy may present evidence and cross-examine any witnesses. The Board shall cause all hearings to be recorded, and shall determine the controversy and grant any declaratory or injunctive relief allowed by the Law of Administration, including a temporary order. The Board shall not have power to award money damages, attorneys' fees or costs; however it shall have the power to impose fines pursuant to the terms of the Law of Administration and award any kind of equitable relief. All decisions of the Board shall be in writing, and, together with a written justification for the decision and any dissenting opinions, shall be served personally or by certified mail on all Persons involved in the proceeding before the Board. All records of the Board shall be open to public inspection.

c. Employment of Water Engineer. The Board shall have the authority to employ a Water Engineer to carry out such functions as assigned by the Board pursuant to the Law of Administration, including the supervision of any water commissioners appointed by the Board. As set forth in the Law of Administration, the Engineer shall hold hearings upon notice in proceedings before the Engineer and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint technical experts. The Tribes and the State shall enforce the Engineer's subpoenas in the same manner as prescribed by the laws of the Tribes and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The Persons involved in the controversy may present evidence and cross examine any witnesses. The Engineer shall cause all hearings to be recorded, and shall determine the controversy and grant any relief allowed by the Law of Administration, including a temporary order. All decisions of the Engineer shall be in writing, and, together with a written justification for the decision, shall be served personally or by certified mail on all Persons involved in the proceeding before the Engineer. All records of the Engineer shall be open to public inspection.

d. Appointment of Water Commissioner(s)

i. The Board shall have the authority, upon a unanimous vote of all five members of the Board, to appoint one or more commissioners to provide day-to-day administration of water on the Reservation. The compensation for any such commissioner and the identification of the Person(s) responsible for paying costs associated with the appointment of any such commissioner must also be established by a unanimous vote of all five members of the Board as part of the Board action appointing any such commissioner. Any commissioner appointed shall act under the supervision of the Water Engineer.

ii. Under the jurisdiction of the Board, and as set forth in the Law of Administration, the commissioner(s) shall have the authority to administer and distribute water only on the Reservation. The authority of any commissioner(s) appointed pursuant to this subsection, as it pertains to portions of the Tribal Water Right used within the FIIP, extends only to the delivery of water to FIIP diversion facilities and shall not extend to the administration of that water in FIIP facilities or on lands served by the FIIP, which shall remain subject to the authority of the Project Operator.

6. Review and Enforcement of Board Decisions.

a. Decisions by the Board shall be effective immediately, unless stayed by the Board. Persons involved in the proceedings before the Board may appeal any final decision by the Board to a Court of Competent Jurisdiction within thirty days of such decision. An appeal of a final decision of the Board shall be styled as a petition for judicial review of an agency decision pursuant to the rules of procedure of the court from which review is sought. The petition for judicial review shall be filed with the Board and the court and served upon all Persons involved in the proceeding before the Board, as well as the Tribes, the State and the United States. Service shall be accomplished according to the requirements of the court's rules of procedure.

b. Unless a petition is filed within thirty days of a final decision of the Board, as provided in Article IV.I.6.a, any decision of the Board shall be recognized and enforced by any court with personal and subject matter jurisdiction over the matter on petition by any Person, or a successor in interest, before the Board in the proceeding in which the decision was made.

c. A Court of Competent Jurisdiction in which a timely petition is filed pursuant to Article IV.I.6.a, or any court with personal and subject matter jurisdiction over the matter in which a petition to confirm or enforce is filed pursuant to Article IV.I.6.b, may order such temporary or permanent relief as it considers just and proper subject to the limited waivers of immunity set forth in Article IV.I.8.

d. An appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to Article IV.I.6.a, or in which a petition to confirm or enforce is filed pursuant to Article IV.I.6.b, in the manner and to the same extent as from orders or judgments of the court in a civil action.

e. In any petition to confirm or enforce the Board's decision, the Board shall file with the court to which appeal is taken the record of the proceedings before the Board within the time and in the manner provided by the court's rules of procedure.

f. The appellate court shall conduct the review on the record made before the Board. In considering the petition, the Board's legal conclusions shall be reviewed for correctness and its factual findings for abuse of discretion.

g. In the event that a court determines that it lacks subject matter or personal jurisdiction to rule on a petition for judicial review of a Board decision, the party filing the petition shall be entitled to petition for judicial review from any other Court of Competent Jurisdiction within thirty days from the date of a final court order finding a lack of jurisdiction.

7. Public Meetings and Records

a. Notwithstanding any other provisions of law, the Board is a public agency for purposes of the applicability of State and Tribal right to know laws.

b. All regular and special meetings of the Board, including all hearings conducted by the Office of the Engineer or the Board, shall be open to the observation of the general public pursuant to State and Tribal open meeting laws. Where there is a conflict of laws, the law that provides for greater openness to the public applies.

c. Where no more specific notice provisions are set forth in the Law of Administration, notice of any meeting, including an agenda, shall be provided to the public in a manner and timeframe consistent with the criteria set forth in State and Tribal law. Where there is a conflict of laws, the law that provides for earlier notice shall apply.

d. The Board shall keep the following records:

i. minutes of all meetings;

ii. recordings of all hearings conducted by the Board or the Office of the Engineer;

iii. all documents filed with or generated by the Board or the Office of the Engineer;

iv. any other records required by applicable provisions of Federal, State or Tribal law, provided that if there is a conflict of laws, the law that provides for more expansive record retention shall apply.

e. All Board records are public records and shall be made available to the public for inspection under such reasonable terms and conditions as the Board shall establish.

8. Waiver of Immunity. The Tribes and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, in order to permit the resolution of disputes under the Compact by the Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribes or the State shall not extend to any action for money damages, costs, or attorneys' fees. The Parties recognize that only Congress can waive the immunity of the United States and that the participation of the United States in the proceedings of the Board shall be governed by Federal law, including 43 U.S.C. 666.

J. Amendments to the Law of Administration. The Board may not amend the Law of Administration. No amendment by the Tribes or the State of the Law of Administration shall be effective unless and until the other makes an analogous amendment. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

K. Water Rights Database. The Board shall cause all Appropriation Rights and Changes in Use authorized by the Board and all uses of water registered pursuant to the Law of Administration to be entered into the DNRC water rights database in a format agreed to by the Board and the DNRC.

ARTICLE V - DISCLAIMERS AND RESERVATION OF RIGHTS

A. No Effect on Water Rights of Other Tribes or on other Federal Reserved Water Rights.

1. Except as otherwise provided herein, the relationship between the Tribal Water Right described herein and any water rights of any other Indian tribe or its members, or of any federally-derived water right of an individual outside the boundaries of the Flathead Indian Reservation, or of the United States in its own right or on behalf of such other tribes or individuals, shall be determined by the rule of priority.

2. Nothing in this Compact shall be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other Indian tribe, its members or Indian owners of trust land outside of the Flathead Indian Reservation.

3. Nothing in this Compact is intended, nor shall it be used, to affect or abrogate a right or claim of an Indian tribe other than the Confederated Salish and Kootenai Tribes.

4. Except as provided herein and authorized by Congress, nothing in this Compact shall be construed or interpreted to establish the nature, extent, or manner of administration of rights to water of the United States on Federal lands outside of the Flathead Indian Reservation.

B. General Disclaimers. Nothing in this Compact shall be construed or interpreted:

1. To preclude the Tribes, Tribal members, and Allottees, or the United States, from applying to the Water Management Board for an Appropriation Right under the Law of Administration on the same basis as any other Person;

2. As a precedent for litigation of aboriginal or reserved water rights;

3. As precedent for interpretation or administration of future compacts between the United States and the State, or between the United States and any other state, or between the State and any other state;

4. As precedent for negotiation, interpretation or administration of any existing or future Compact, negotiated settlement, judicial settlement or other form of accommodation of water rights involving Indian tribes or individual Indians;

5. To preclude the possession, acquisition or exercise of Water Rights Arising Under State Law by the Tribes or Allottees or members of the Tribes;

6. To limit in any way the right of the Parties or any other Person to litigate any issue or question not resolved by this Compact;

7. To authorize the taking of any water right that is vested under State, Tribal or Federal law;

8. To affect the ability of tribes or qualified individuals under Title 25, Sections 151.4 and 151.8, Code of Federal Regulations, to purchase land from willing sellers or the Secretary's ability to convert fee land to trust land status;

9. To create or deny substantive rights through headings or captions used in this Compact;

10. To address or prejudge how the Tribal Water Right may be treated or interpreted in any interstate or international water apportionment proceeding;

11. To constitute a waiver of sovereign immunity by the Tribes or the State except as expressly set forth in this Compact;

12. To constitute a waiver of sovereign immunity by the United States except as expressly set forth in 43 U.S.C. 666 or as otherwise provided by Congress;

13. Except as expressly provided herein and as may be required by Congress, to modify the obligations of any agency of the United States;

14. To limit or prohibit the Tribes, their members or Allottees, or to limit the United States in any capacity, from objecting in any general stream adjudication in the Montana Water Court to any claims to water rights on or off the Flathead Indian Reservation;

15. To prevent the Montana Water Court from adjudicating any properly filed claims or objections to the use of water within the Flathead Indian Reservation;

16. To limit or prohibit the Tribes, their members or Allottees, or the United States in any capacity, from filing any necessary action to prevent any Person or Party from interfering with the Tribal Water Right;

17. To affect or determine the applicability of any State, Tribal or Federal law not subject to this Compact, including, but not limited to environmental and public safety laws, on activities of the Tribes, their members or Allottees or the United States;

18. To prejudice or predetermine any right that Tribal members or Allottees have to obtain the use of a portion of the Tribal Water Right under the provisions of this Compact and the Law of Administration;

19. To affect the capacity of any Tribal member or Allottee to lease his or her land;

20. To empower the Water Management Board to assess a fee for the use of water;

21. To confer any jurisdiction on the Water Management Board over any water right whose place of use is located outside the exterior boundaries of the Reservation;

22. To limit, diminish, modify, or enlarge any Party's adjudicatory or legislative jurisdiction except as expressly provided herein;

23. To constitute a waiver of an individual's right to object to the Compact during the Water Court decree process; or

24. To transfer, convert, or otherwise change the ownership or trust/fee status of land on the Reservation. Specifically, nothing in this Compact changes fee owned land to trust land or trust land to fee land, or in any way alters the ownership status of land within the exterior boundaries of the Flathead Indian Reservation.

C. Other Rights Reserved.

1. Nothing in this Compact is intended, nor shall be interpreted or applied, in any manner to alter, limit, or diminish the right of the Tribes to take all steps they deem necessary or prudent before any court or adjudicative forum, any legislature or legislative entity, or any State or Federal administrative agency, including but not limited to the Federal Energy Regulatory Commission, to protect any interests in Water Rights Arising Under State Law that the Tribes may acquire or seek to acquire and which are associated with the Federal Energy Regulatory Commission license for the Kerr Hydroelectric Project, FERC Project No. 5 (32 FERC # 61,070, July 17, 1985, as amended) or any other hydroelectric facility located on the Reservation subject to FERC jurisdiction.

2. The Parties expressly reserve all rights not granted, recognized or relinquished in this Compact, including but not limited to the right to the continued exercise by members of the

Tribes of Tribal off-Reservation rights to hunt, fish, trap and gather food and other materials, as reserved in Article III of the Hellgate Treaty of July 16, 1855 (12 Stat. 975).

D. Obligations of the United States Contingent.

1. Notwithstanding any language contained herein and except as authorized under Federal law, the obligations of the United States under this Compact shall be contingent upon ratification and necessary authorization by Congress.

2. The expenditure or advance of any money or the performance of any work by the United States or the Tribes pursuant to this Compact which requires appropriation of money by Congress or by the Tribes is contingent on such appropriation being timely made.

3. The Tribes and the State recognize that this Compact has not been finally approved by the United States as of the date of execution by the Tribes or the State, and that ratification by the Tribes or by the State in no manner limits or restricts the discretion of the United States in the negotiation of all matters related to this Compact.

E. Obligations of the State Contingent. The expenditure or advance of any money or the performance of any work by the State pursuant to this Compact that requires appropriation of money by the Montana Legislature or allotment of funds shall be contingent upon such appropriation or allotment.

ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

A. State Contribution to Settlement. The Parties agree that the State contribution to settlement shall be $55 million. The agreement to, expenditure, or advance of any State contribution which may require authorization and appropriation of money by the Montana Legislature or allotment of funds is contingent on such appropriation or allotment being made pursuant to Article V, Section 11(4) of the Montana Constitution. The Parties recognize that the amount and structure of the State funding is contingent on action of the Montana Legislature. If the Legislature appropriates funds in a manner inconsistent with the structure contemplated by the Parties in this section, the Parties agree to meet and confer to consider adjustments to the funding structure and priorities described in Articles IV.H.1.a and b above. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

1. The State Contribution to Settlement shall be allocated as follows:

a. $4 million for water measurement activities;

b. $4 million for improving on-farm efficiency;

c. $4 million for mitigating the loss of Stock Water deliveries from the FIIP;

d. $30 million to offset pumping costs associated with Compact implementation and related projects; and

e. $13 million to provide for aquatic and terrestrial habitat enhancement.

B. Federal Contribution to Settlement. The Parties agree that the Federal contribution to settlement shall be negotiated by the Tribes, the State, and the United States as part of the negotiations on the Federal legislation to ratify and effectuate the Compact.

ARTICLE VII - FINALITY

A. Ratification and Effectiveness of Compact.

1. The terms of the Compact may not be amended without the consent of all the Parties following the first ratification by any Party. After the Effective Date, no provision of the Compact shall be modified except as expressly provided in the Compact. Any amendment that is not expressly provided for in the Compact must be ratified in the same manner as the Compact; however, if the proposed amendment concerns non-monetary matters and does not affect the water rights of the Tribes determined in this Compact or other property held in trust by the United States on behalf of the Tribes or Indians, the Secretary may ratify such amendment on behalf of the United States, as determined by Congress. The State and the Tribes will support provisions in the Federal legislation ratifying the Compact that delegates to the Secretary the authority to ratify such future amendments on behalf of the United States.

2. Notwithstanding any other provision in the Compact, the Tribes reserve the unilateral right to withdraw as a Party if:

a. Congress has not ratified this Compact and authorized appropriations for the Federal contribution to the settlement within four years from the date on which the ratification of the

Compact by the Montana Legislature takes effect under State law. This is a continuing right until Congress ratifies the Compact;

b. Appropriations are not made in the manner contemplated by the Federal legislation ratifying this Compact;

c. The Parties do not reach agreement on the State contribution to settlement;

d. The State has not authorized appropriations for the State contribution to settlement within five years from the date the Compact is ratified by the United States; or

e. Appropriations are not made by the State in the manner contemplated by any agreement for contributions to settlement made pursuant to Article VI.A.

3. The Tribes may exercise their right to withdraw from the Compact under Article VII.A.2 by sending to the Governor of the State and to the Secretary by certified mail a resolution of the Tribal Council expressing the Tribes' intent to withdraw and specifying a reason for withdrawal and a withdrawal date not sooner than one hundred and twenty days from the date of the resolution. On the date designated in the resolution for Tribal withdrawal, the Compact shall become null and void without further action by any Party.

4. Notwithstanding any other provision in the Compact, the State reserves the unilateral right to withdraw as a Party to the Compact if:

a. Congress has not ratified this Compact within four years from the date on which the ratification of the Compact by the Montana Legislature takes effect under State law. This is a continuing right until Congress ratifies the Compact;

b. The Tribes have not ratified this Compact within five years from the date on which the ratification of the Compact by the Montana Legislature takes effect under State law;

c. Congress requires a State contribution to settlement that exceeds the contributions described in Article VI.A; or

d. Congress does not authorize and appropriate the Federal share of funding agreed to pursuant to Article VI.B.

5. The State may exercise its right to withdraw under Article VII.A.4 by sending to the Chair of the Tribal Council and to the Secretary a letter delivered by certified mail from the Governor of the State expressing the State's intent to withdraw and specifying a reason for withdrawal and a withdrawal date not sooner than one hundred and twenty days from the date of the letter. On the date designated in the letter for State withdrawal, the Compact shall become null and void without further action by any Party.

B. Incorporation into Decrees.

1. Within one hundred eighty (180) days of the date this Compact is ratified by the Tribes, the State, and the United States, whichever is latest, the Tribes, the State, and/or the United States shall file, in the general stream adjudication initiated by the State, pursuant to the provisions of 85-2-702(3), MCA, a motion for entry of the proposed decree attached hereto as Appendix 38 as the decree of the water rights held by the United States in trust for the Tribes, Tribal members, and the Allottees of the Tribes as well as those Water Rights Arising Under State Law set forth in Article III.D.4.a.i and Article III.D.5, of which the Tribes become co-owners pursuant to this Compact, and such other provisions of the Compact as are related to the determination of these water rights and their administration. If the Montana Water Court does not approve the proposed decree submitted with the motion within three years following the filing of the motion, the Compact shall be voidable by written agreement of the State and the Tribes. If the Montana Water Court approves the proposed decree within three years, but the decree is subsequently set aside by the Montana Water Court or on appeal, the Compact shall be voidable by written agreement of the State and the Tribes. Any effect of the failure of approval or setting aside of the decree on the approval, ratification, and confirmation by the United States shall be as provided by Congress. The Parties understand and agree that the submission of the Compact to a State court or courts, as provided for in the Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the State court or expand in any manner the waiver of sovereign immunity of either the United States or the Tribes in the McCarran Amendment, 43 U.S.C. 666, or other provision of Federal law.

2. Consistent with 3-7-224, MCA, setting forth the jurisdiction of the chief water judge, for the purposes of 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to the contents of Appendix 38, and may extend to other sections of the Compact only to the extent

that they relate to the determination of water rights and their administration. The final decree shall consist of the contents of Appendix 38, and such other information as may be required by 85-2-234, MCA. Nevertheless, pursuant to 85-2-702(3), MCA, the terms of the entire Compact must be included in the preliminary decree without alteration for the purpose of notice.

C. Disposition of State and Federal Suits.

1. On issuance of a final decree by the Montana Water Court or its successor, and the completion of any direct appeals therefrom, or on expiration of the time for filing any such appeal:

a. the United States, the Tribes, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed.R.Civ.P., to dismiss without prejudice any and all claims of the Tribes, Tribal members, and Allottees and any and all claims made by the United States for the benefit of the Tribes, Tribal members, and Allottees in United States v. Abell, No. CIV-79-33-M (filed April 5, 1979). The case may only be resumed if either the State or the Tribes exercise the rights each holds under Article VII.A;

b. the Tribes and the State shall execute and file joint motions to dismiss without prejudice the case entitled Confederated Salish and Kootenai Tribes v. Bud Clinch, Director, Montana Department of Natural Resources and Conservation, and the Montana Department of Natural Resources and Conservation, Montana First Judicial Court, County of Lewis and Clark, Cause No. BDV-2001-253, Montana First Judicial District Court, Lewis and Clark County, Montana;

c. The United States, the Tribes, and the State shall execute and file joint motions pursuant to Rule 41(a), Mont.R.Civ.P., to dismiss without prejudice any and all claims of the Tribes, Tribal members, and Allottees and any and all claims made by the United States for the benefit of the Tribes, Tribal members, and Allottees that have been filed in the Montana Water Court as contemplated by Article VII.D.2. The case adjudicating those claims may only be resumed if either the State or the Tribes exercise the rights each holds under Article VII.A.2 and 4; and

d. The Decree shall be filed by the Parties as a consent decree in Abell, or in Federal court as a new proceeding after the dismissal of Abell conditional on agreement by the Parties to seek the necessary State, Tribal, and Federal ratification of the Compact, if it is finally determined in a judgment binding on the State that the State courts lack jurisdiction over, or that the State court proceedings are inadequate to adjudicate some or all of the water rights asserted in Abell.

D. Settlement of Water Rights Claims.

1. The water rights and other benefits confirmed to the Tribes in this Compact are in full and final satisfaction of and are intended to be in replacement of and substitution for all claims to water or to the use of water by the Tribes, Tribal members, and Allottees and the United States on behalf of the Tribes, Tribal members, and Allottees existing on the Effective Date, except for any Appropriation Rights or Water Rights Arising Under State Law held by the Tribes, their members, or Allottees as of the Effective Date or acquired thereafter, which shall be satisfied pursuant to their own terms.

2. The Tribes and United States will file all of their claims to water on and off of the Flathead Indian Reservation on or before July 1, 2015, pursuant to 85-2-702(3), MCA. Upon filing, the Tribes and United States will request that the Montana Department of Natural Resources and Conservation stay any action on such claims pending the occurrence of the following events:

a. The passage of an Act of Congress ratifying the Compact and authorizing appropriations for monetary settlement to the Tribes;

b. Approval by the Tribes of the Compact and the Act described in Article VII.D.2.a.

c. Issuance by the Montana Water Court of a final water right decree or decrees incorporating the water rights quantified pursuant to this Compact; and

d. All portions of the final Water Court decree or decrees survive exhaustion of all avenues of appeal.

3. Upon occurrence of these events, the waiver and dismissal described in Article VII.C.1.c and VII.D.3 shall be accomplished.

4. In consideration of the water rights and other benefits confirmed to the Tribes, Tribal members, and Allottees in this Compact, and of performance by the State and the United States of all actions required by this Compact, and on entry of a final order issuing the decree of the Tribal Water Right held in trust by the United States as quantified in this Compact and displayed in Appendix 38 and occurrence of the events set forth in Article VII.D.2, the Tribes

and the United States as trustee for the Tribes, Tribal members, and Allottees shall waive, release, and relinquish any and all claims to water rights or to the use of water, and shall dismiss any such claims filed pursuant to Article VII.D.2, existing on the Effective Date.

E. Settlement of Tribal Claims Against the United States. Waiver of claims against the United States by the Tribes, their members and Allottees shall be as provided by Congress.

F. Binding Effect. After the Effective Date and the entry of a final decree by the Montana Water Court of the water rights quantified by this Compact, or if necessary the Federal court in Abell, the Compact's terms shall be binding on:

1. The State and any Person using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State; provided that, the validity of consent, ratification, or authorization by the State is to be determined by State law;

2. The Tribes and any Person using, claiming or in any manner asserting any right to the use of the Tribal Water Right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribes, Tribal members, and Allottees, or any rights arising under Tribal law; provided that, the validity of consent, ratification or authorization by the Tribes is to be determined by Tribal and, if applicable, Federal law; and

3. The United States and any Person using, claiming or in any manner asserting any right under the authority of the United States to the use of water in the State; provided that, the validity of consent, ratification or authorization by the United States is to be determined by Federal law.

ARTICLE VIII - LEGISLATION/DEFENSE OF COMPACT

A. State Legislation. The State and the Tribes agree to seek ratification of the Compact by the Montana Legislature and any additional State legislation necessary to effectuate the Compact.

B. Federal Legislation. The State and the Tribes agree to seek ratification of the Compact by Congress and any additional Federal legislation necessary to effectuate the Compact.

1. The State and the Tribes will support provisions in the Federal legislation ratifying this Compact that authorizes the United States District Court for the District of Montana in Missoula to review decisions of the Board and the MFWP authorized in the Compact; provided that, the sovereign immunity of the United States is not waived by such provision of the legislation.

2. The State and Tribes will support provisions in the Federal legislation ratifying this Compact that authorizes the Net Power Revenues distributions described in Article IV.H.3.

3. The State and the Tribes will support provisions in the Federal legislation ratifying this Compact that delegates to the Secretary the authority to ratify future amendments on behalf of the United States pursuant to Article VII.A.1.

C. Tribal Legislation. The State and the Tribes agree to seek ratification of the Compact by the Tribes and any Tribal legislation necessary to effectuate the Compact.

D. Defense of the Compact. The Parties agree to defend the Compact after its Effective Date from all challenges and attacks and in all proceedings pursuant to Article VII.B and C.

IN WITNESS WHEREOF the representatives of the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States, have signed the Compact on the ____ day of ____, 201_.

History: En. Sec. 1, Ch. 294, L. 2015.

85-20-1902. Unitary administration and management ordinance.

CHAPTER I

WATER RESOURCES CONSERVATION, DEVELOPMENT AND ADMINISTRATION

PART 1 - GENERAL PROVISIONS

1-1-101. Authority.

1. This Ordinance parallels legislation adopted by the Confederated Salish and Kootenai Tribes pursuant to Tribal approval of the Confederated Salish and Kootenai Tribes-Montana Compact and the Montana Water Use Act of 1973 to effectuate Unitary Administration and Management on the Flathead Indian Reservation.

2. This Ordinance and the parallel Tribal legislation are contingently effective; neither operates with the force and effect of law without the other. No modification by the Tribes or the State of Montana of these respective laws shall be effective within the exterior boundaries of the Reservation unless and until the other makes an analogous modification. No amendment of this Ordinance that may affect a use of the Tribal Water Right may be made without Secretarial approval.

3. Upon the Effective Date of the Compact, this Ordinance shall govern all water rights, whether derived from tribal, state or federal law, and shall control all aspects of water use, including all permitting of new uses, changes of existing uses, enforcement of water right calls and all aspects of enforcement within the exterior boundaries of the Flathead Indian Reservation. Any provision of Title 85, MCA, that is inconsistent with this Law of Administration is not applicable within the Reservation.

1-1-102. Reserved.

1-1-103. Reserved.

1-1-104. Definitions. Unless otherwise defined herein, capitalized terms used in this Ordinance shall have the meaning set forth in the Compact.

1. "Allottee" or "Allottees" means an owner of an interest in a tract of land held in trust by the United States which was allotted pursuant to the Act of April 23, 1904, 33 Stat. 302, as amended, or the Act of February 25, 1920, 41 Stat. 452, as amended.

2. "Appropriate" means to divert, impound, maintain an instream, inlake, inwetland or impoundment use, or withdraw a quantity of water for a beneficial use on the Flathead Indian Reservation under color of law.

3. "Appropriation" means the diversion, impoundment, maintenance of an instream, lake, Wetland, or impoundment use, or the withdrawal of a quantity of water for a Beneficial Use on the Flathead Indian Reservation under color of law.

4. "Appropriation Right" means a right to Appropriate water issued by the Water Management Board pursuant to the terms of the Compact and this Ordinance.

5. "Aquifer Injection" means the subsurface discharge of fluids into the ground by means of an Injection Well.

6. "Appropriator" means a Person who Appropriates water.

7. "Beneficial Use" means a consumptive or non-consumptive use of water for the benefit of the Appropriator, other Persons, the Tribes, one or more Tribal members, or the general public, including but not limited to agricultural, stock water, domestic, fish and wildlife, cultural and religious practices, industrial, Instream Flow, irrigation, mining, Mitigation Water, municipal, power, recreational uses, and Wetlands purposes.

8. "Business" means a building or site where commercial work is carried on, including but not limited to a factory, store, or office.

9. "Change in Use" means an authorized change in the point of diversion, the place of use, the period of use, the purpose of use, or the place of storage of an Appropriation Right issued by the Water Management Board under the Compact and this Ordinance, or of an Existing Use. A changed water right retains the original priority date of that right.

10. "Compact" means that water rights settlement entered into by the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States.

11. "Complainant" means one who files a Complaint.

12. "Complaint" means a written assertion of injury submitted to the Engineer pursuant to Section 3-1-102 of this Ordinance.

13. "Consumptive Use" means the amount of water used for a beneficial purpose, such as water transpired by growing vegetation, evaporated from soils or water surfaces, or incorporated into products, that does not return to the Groundwater or surface water source.

14. "Designee" means an individual selected by the Engineer to exercise, in regard to a particular application or objection, those powers assigned to the Engineer under Chapter II of this Ordinance. Any Staff is eligible to be selected as a Designee provided that he or she has not previously worked on the particular application or objection at issue.

15. "Developed Spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results

in any increase in the yield of Groundwater, from which Groundwater is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

16. "Development" means contiguous or closely grouped parcels of land under the same or affiliated ownership, including, but not limited to, housing subdivisions or any combination of business and residential units.

17. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.

18. "Domestic Allowance" means an entitlement to use water issued to households and small businesses pursuant to the provisions of Section 2-2-117 of this Ordinance; Domestic Allowances include Individual Domestic Allowances, Shared Domestic Allowances, and Development Domestic Allowances.

19. "Domestic Use" means those water uses common to a household, including washing, drinking, bathing, waste disposal, cooling and heating, domestic animals, and garden and landscape irrigation. Domestic Use does not include the filling of ponds, pits, pit-dams or reservoirs.

20. "Effective Date" means the date on which the Compact is finally approved by the Tribes, by the State, and by the United States, and on which the Law of Administration has been enacted and taken effect as the law of the State and the Tribes, whichever date is latest.

21. "Emergency" means a situation that demands unusual or immediate action to prevent imminent injury to life, property, or the environment.

22. "Enclosed Storage" means a storage container fully enclosed to include a cistern or tank.

23. "Existing Use" means a use of water under color of Tribal, State or Federal law in existence as of the Effective Date, including uses in existence on that date that are eligible for either of the registration processes set forth in Sections 2-1-101 through 2-1-108 of this Ordinance; provided that any portion of a Water Right Arising Under State Law within the Reservation that is, at any point after the date the ratification of the Compact by the Montana Legislature takes effect under State law, voluntarily relinquished or is legally determined to be abandoned, relinquished, or have otherwise ceased to exist, shall be stricken from the relevant basin decree as a Water Right Arising Under State Law and be entitled to no further protection as such a right or as an Existing Use.

24. "Flathead Indian Irrigation Project" or "FIIP" means the irrigation project developed by the United States to irrigate lands within the Reservation pursuant to the Act of April 23, 1904, Public Law 58-159, 33 Stat. 302 (1904), and the Act of May 29, 1908, Public Law 60-156, 35 Stat. 441 (1908), and includes, but is not limited to, all lands, reservoirs, easements, rights-of-way, canals, ditches, laterals, or any other FIIP facilities (whether situated on or off the Reservation), head gates, pipelines, pumps, buildings, heavy equipment, vehicles, supplies, records or copies of records and all other physical, tangible objects, whether of real or personal property, used in the management and operation of the FIIP.

25. "FIIP Influence Area" means the lands influenced by the operations of the FIIP as identified on the map attached to the Compact as Appendix 2.

26. "Flathead Indian Reservation" or "Reservation" means all land within the exterior boundaries of the Indian Reservation established under the July 16, 1855 Treaty of Hellgate (12 Stat. 975), notwithstanding the issuance of any patent, and including rights-of-way running through the Reservation.

27. "Flathead System Compact Water" means that portion of the Tribal Water Right consisting of 229,383 acre feet per year that the Tribes may withdraw from the Flathead River or Flathead Lake, which includes up to 90,000 acre feet per year stored in Hungry Horse Reservoir, with a maximum total volume consumed of 128,158 acre feet per year.

28. "Groundwater" means any water that is beneath the surface of the earth.

29. "Groundwater Management Area" means an area designated and managed under Section 1-1-109 of this Ordinance.

30. "Heating/Cooling Exchange Well" means a Well for the purpose and with the attributes set forth in Section 2-2-119(1) of this Ordinance.

31. "Home" means a house, apartment, or other shelter that is a permanent or temporary residence of a Person, family, or household.

32. "Illegal" or "Illegally" means, as it pertains to the use of water, to Appropriate water not pursuant to an Appropriation Right or Existing Use.

33. "Injection Well" means a Well utilized for injecting fluids or gases into geologic materials. Open pits, ponds, or excavations are not considered Injection Wells.

34. "Instream Flow" means a stream flow retained in a watercourse to benefit the aquatic environment. Instream Flow may include Natural Flow or streamflow affected by regulation, diversion, or other modification. A water right for Instream Flow purposes is quantified for a stream reach and measured for enforcement purposes at a specified point.

35. "Livestock" means cattle, bison, sheep, swine, horses, mules, goats, or other animals specifically raised and used for food or fiber or as a beast of burden.

36. "Mitigation" means the reallocation of surface water or Groundwater through a Change in Use or other means to offset adverse effect resulting from Net Depletion by any proposed new Appropriation.

37. "Mitigation Plan" means a plan as developed by an applicant to provide Mitigation.

38. "NRD" means the Confederated Salish and Kootenai Tribes' Natural Resources Department.

39. "Natural Wetland" means a Wetland area that is maintained with a natural surface water source, natural Groundwater source or a combination of natural surface water and natural Groundwater without any artificial means of diversion, impoundment, withdrawal, excavation, or other artificial means of control.

40. "Net Depletion" means the calculated volume, rate, timing, and location of reductions to a water source resulting from a proposed new Appropriation that are not offset by the corresponding accretions to that source caused by the proposed new Appropriation.

41. "Non-consumptive Use" means any beneficial use of water that does not meet the definition of consumptive use.

42. "Other Instream Flows" means the Tribal instream flow water rights for stream reaches described in Article III.C.1.d.iii of the Compact.

43. "Office of the Engineer" means the Engineer and Staff, acting in their official capacities.

44. "Person" means an individual or any other entity, public or private, including the Tribes, the State, and the United States, and all officers, agents and departments of each sovereign.

45. "Pits, Pit-dams, Constructed Ponds, or Reservoirs" refer to bodies of water that are created by man-made means and which store water for beneficial use.

46. "Project Manager" means the person or team of persons hired by the Project Operator to operate and manage the FIIP in accordance with its direction, this and other applicable agreements, and applicable law, including the Compact.

47. "Project Operator" means that entity with the legal authority and responsibility to operate the Flathead Indian Irrigation Project.

48. "Public Water Supply System" means a system for the provision of water for human consumption that has at least 15 service connections or that regularly serves at least 25 Persons daily for any 60 or more days in a calendar year.

49. "Publish" or "Publication" means, unless otherwise designated, the printing of an announcement of document availability, or the text of the document itself, in a newspaper of general circulation on the Reservation and in the Tribal newspaper and posting on the Water Management Board's website.

50. "Redundant Well" means a Well to provide a backup source of water for a Public Water Supply System.

51. "Restored Natural Wetland" means a Wetland area that, upon restoration, shall be maintained with a natural surface water source, natural Groundwater source, or a combination of natural surface water and natural Groundwater without any artificial means of diversion, impoundment, withdrawal, excavation, or other artificial means of control.

52. "Secretary" means the Secretary of the United States Department of the Interior or the Secretary's duly assigned representative.

53. "Shall" means a mandatory and not a discretionary act.

54. "Shared Well" means a single Well that is physically manifold to multiple homes and/or businesses and is cooperatively used pursuant to a Shared Well Agreement.

55. "Shared Well Agreement" means a legally binding document that stipulates the manner in which a Shared Well is jointly used between or among all Homes or Businesses connected to the well; to be valid, it must be signed by representatives for each Person having a possessory interest in each individual Home or Business connected to a Shared Well.

56. "Spring" means a perennial hydrologic occurrence of water involving the natural flow of water originating from beneath the land surface and arising to the surface of the ground.

57. "Staff" means the employees, contractors and others assigned to or engaged by the Board or the Engineer to assist or facilitate the Engineer in carrying out the duties assigned to the Engineer by the Compact and this Ordinance, and by the Board pursuant to the same.

58. "Stock Tank" means a 30 to 1500 gallon tank used to provide drinking water for Livestock that is equipped with a water level regulator that shuts off supply to keep the Stock Tank from overflowing.

59. "Substitute Well" means a Well that replaces an existing Well which is to be abandoned.

60. "Temporary Emergency Appropriation" means the temporary beneficial use of water necessary to protect lives, property, or the environment, by reason of fire, storm, earthquake or other disaster, or unforeseen combination of circumstances which call for immediate action. An appropriation made necessary due to drought conditions is not a temporary emergency appropriation.

61. "Temporary Groundwater Management Area" means an area established pursuant to Section 1-1-109(10) of this Ordinance.

62. "Tribal Member" means a Person who is lawfully enrolled by and whose name appears on the official enrollment list of the Confederated Salish and Kootenai Tribes.

63. "Tribal Water Right" means the water rights of the Confederated Salish and Kootenai Tribes, including any Tribal member or Allottee, that arise under Federal law, as set forth in Article III.A, Article III.C.1.a through j, Article III.C.1.k.i, Article III.C.1.l.i, Article III.D.1 through 3, and Article III.D.7 and 8 of the Compact. The term "Tribal Water Right" also includes those rights identified in Article III.H of the Compact that are appurtenant to lands taken into trust by the United States on behalf of the Tribes.

64. "Tribes" means the Confederated Salish and Kootenai Tribes of the Flathead Reservation, and all officers, agencies, and departments thereof.

65. "Waste" or "Wasting" means the unreasonable loss of water resulting from the design, construction, operation or maintenance of a water diversion, storage or distribution facility, Well, Developed Spring, or the application of water to anything but a beneficial use.

66. "Water Engineer" or "Engineer" means the Person satisfying the criteria in Section 1-2-109 of this Ordinance employed by the Water Management Board pursuant to Article IV.I.5.c of the Compact to exercise the powers and duties of the Water Engineer as set forth in the Compact and this Ordinance.

67. "Water Management Board" or "Board" means the board created by Article IV.I of the Compact and vested with the responsibilities set forth in the Compact and in Tribal and State law for the administration of water within the Reservation.

68. "Water Rights Arising Under State Law" means those valid water rights Arising Under State Law existing as of the Effective Date and not subsequently relinquished or abandoned, as those rights are: decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permitted by the DNRC; exempted from filing in the Montana general stream adjudication pursuant to 85-2-222, MCA; or excepted from the permitting process pursuant to 85-2-306, MCA.

69. "Well" means any artificial opening or excavation in the ground, however made, by which Groundwater is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

70. "Well Log Report" means DNRC Form No. 603 (see ARM 36.12.102), or any successor reporting form and requirement promulgated in State law.

71. "Well Shaft Casing" means an impervious durable pipe placed in a well or Developed Spring to prevent the walls from caving, to seal off surface drainage, or undesirable water, gas, or other fluids to prevent their entering the well, and to prevent the Waste of Groundwater.

72. "Wetland" means an area that is inundated or saturated by surface water or Groundwater at a frequency and duration sufficient to support, and that under normal circumstances does

support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

73. "Wetland Quantified Appropriation Right" means an Appropriation Right issued for a Wetlands purpose that utilizes any man-made diversions, impoundment, withdrawals, excavations, or other artificial means for the purposes of appropriation for either all or a portion of a Wetland.

74. "Wetland Protective Appropriation Right" means an Appropriation Right issued for either a Natural Wetland or Restored Natural Wetland.

75. "Works" means all property, real or personal, necessary or convenient to the appropriation, conservation, storage, diversion, distribution, development, screening and utilization of water.

1-1-105. Measurement of Water. Upon the effective date of this Ordinance, legal standards of measurement of water within the Flathead Reservation shall be as follows:

1. Flow rates shall be measured in cubic feet per second, unless otherwise provided herein. Where documentary evidence of an existing use is expressed in gallons per minute, 448.8 gallons per minute shall be considered equivalent to a flow of one cubic foot per second. Where documentary evidence of an existing use is expressed in statutory or miner's inches, 40 statutory or miner's inches shall be considered equivalent to a flow of one cubic foot per second.

2. Volumes of water shall be measured in acre-feet, unless otherwise provided herein. One acre-foot shall be considered equivalent to a volume of 43,560 cubic feet. One cubic foot shall be considered equivalent to a volume of 7.48 gallons.

1-1-106. Measurement of Time. Whenever in this Ordinance an action is required to be performed within a certain number of days, the time for completion of the act shall be measured in calendar days unless the last day falls on a Friday, Saturday, Sunday, or Tribal, State or Federal legal holiday, in which case the time for performance is extended to the next subsequent business weekday.

1-1-107. Appropriation Rights Allowed.

1. The following Appropriation Rights or Changes in Use may be authorized by the Board pursuant to the Compact and this Ordinance:

a. Appropriation Rights for Groundwater appropriations for Redundant or Substitute Wells as set forth in Section 2-2-115 of this Ordinance.

b. Appropriation Rights for Stock Water Allowances as set forth in Section 2-2-116 of this Ordinance.

c. Appropriation Rights for Domestic Allowances as set forth in Section 2-2-117 of this Ordinance.

d. Appropriation Rights for uses of Flathead System Compact Water as set forth in Section 2-2-118 of this Ordinance.

e. Appropriation Rights for non-consumptive geothermal heating or cooling exchange Wells as set forth in Section 2-2-119 of this Ordinance.

f. Appropriation Rights for Temporary Emergency Appropriations as set forth in Section 2-2-120 of this Ordinance.

g. Appropriation Rights or Change in Use authorizations for Wetlands as set forth in Sections 2-2-123 and 2-2-124 of this Ordinance.

h. Appropriation Rights for Non-consumptive Uses, including, but not limited to, hydropower generation and not including flow-through ponds.

i. Appropriation Rights for which adverse effects to existing Appropriators are offset by Mitigation.

j. Changes in Use of all Appropriation Rights or Existing Uses except for those Appropriation Rights authorized under subsections (1)(a), (1)(b), (1)(c), (1)(e), (1)(f), (1)(k), or (1)(l) of this Section or those for Existing Uses exempt from the permitting requirements of 85-2-306, MCA, or from the claim filing requirements of 85-2-221, MCA, as set forth in 85-2-222, MCA; provided that a use authorized under subsection (1)(h) may not be changed from a Non-consumptive Use to a consumptive use.

k. Appropriation Rights to Appropriate surface water to conduct response actions related to natural resource restoration required for:

i. remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

ii. aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or

iii. remedial actions taken pursuant to the Remedial Action Upon Release of Hazardous Substance Act, Title 75, chapter 10, part 7, MCA.

No Appropriation Rights issued pursuant to this subsection may be used for dilution.

l. Appropriation Rights for uses of surface water for or by a municipality or regional distribution system.

m. Appropriation Rights for new uses of the Tribal Water Right by the Tribes, Tribal Members, or Allottees, provided that any such new uses be sourced from:

i. Flathead System Compact Water; or

ii. another source, provided that any adverse effects to existing Appropriators caused by the Net Depletion of the new Appropriation Right must be offset by Mitigation pursuant to Section 1-1-112 of this Ordinance.

2. Other than those Appropriation Rights set forth in subsection (1) of this Section, the Board may not grant an Appropriation Right or other authorization to Appropriate surface water or Groundwater within the exterior boundaries of the Flathead Indian Reservation.

1-1-108. Reservation Water Rights Database. The Board shall cause all Appropriation Rights and Changes in Use authorized by the Board, including those uses registered pursuant to the provisions of Sections 2-1-101 through 2-1-107 of this Ordinance, to be entered into the DNRC water rights database in a format agreed to by the Board and the DNRC.

1-1-109. Groundwater Management Areas. The Board may designate, modify, or repeal either permanent or Temporary Groundwater Management Areas as provided in this part.

1. Each designation of a Groundwater Management Area shall identify the need for the special management, the boundaries of the area, the water resources targeted for special management, and the specific restrictions that will apply in the Groundwater Management Area.

2. The designation, modification, or repeal of a Groundwater Management Area may be initiated by submission of a correct and complete petition by:

a. the Tribes, the State, or the United States;

b. a local public health agency;

c. a municipality, county, or conservation district; or

d. at least one-third of the water rights holders in a proposed Groundwater Management Area.

3. A correct and complete petition shall:

a. be in a form prescribed by the Board;

b. contain facts and analysis prepared by a hydrologist, hydrogeologist, qualified scientist, or a qualified licensed professional engineer demonstrating the existence of one or more of the criteria set forth in subsection (8) are met; and

c. describe proposed measures, if any, needed to mitigate effects of the criteria identified in subsection (8) of this Section; and that are alleged in the petition or describe the rationale as to why a Groundwater Management Area should be repealed or modified.

4. Upon receipt of a completed petition complying with subsection (3) of this Section, the Office of the Engineer shall date stamp the petition.

5. Office of the Engineer review:

a. within 180 days of the date of receipt of the petition pursuant to subsection (4) of this Section, the Office of the Engineer shall:

i. determine in writing that the petition is correct and complete; or

ii. notify the petitioner of any defects in a petition, with an explanation in writing of the defect(s).

b. any petition that is returned pursuant to subsection (5)(a)(ii) of this Section and not corrected within 90 days from the date of return shall be deemed terminated.

c. if the Office of the Engineer does not notify the petitioner pursuant to subsection (5)(a) of this Section, the petition shall be treated as correct and complete.

6. Board review:

a. within 60 days after a petition is determined to be correct and complete, the Board shall:

i. deny the petition in writing in whole or part, stating the reasons for denial;

ii. inform the petitioner in writing that the Board will study the information presented in the petition for a period not to exceed 90 days before denying or proceeding with the petition; or

iii. publish notice of the Board's consideration of action concerning a permanent or Temporary Groundwater Management Area pursuant to subsection (8) of this Section.

b. failure of the Board to act under subsection (6)(a) of this Section shall be deemed a denial of the petition.

7. If the Board determines that a correct and complete petition contains sufficient information to warrant the Board granting the petition, the Board shall proceed to hear the petition. The Board shall provide public notice of the hearing by:

a. publishing a notice at least once each week for 3 successive weeks, with the first notice not less than 30 days before the date of the hearing in a newspaper of general circulation on the Reservation;

b. serving by mail a copy of the notice, not less than 30 days before the hearing, upon each Person or public agency known from an examination of the records of the Board to be a water right holder within the proposed or existing Groundwater Management Area;

c. serving by mail a copy of the notice upon any other Person, including Tribal, State or federal agencies, that the Board knows to be interested in or affected by the proposed designation, modification, or repeal of a Groundwater Management Area.

d. the notice under subsections (7)(a) through (7)(c) must include a summary of the basis for the proposed action. Publication and mailing of the notice as prescribed in this Section, when completed, is considered to be sufficient notice of the hearing to all interested parties.

e. the Board shall make available to the public on its website a complete copy of the petition or request to designate, modify, or repeal either permanent or Temporary Groundwater Management Areas.

8. The Board may designate a permanent Groundwater Management Area if it finds by a preponderance of the evidence that any of the following criteria have been met:

a. current or projected reductions of recharge to the aquifer or aquifers within the boundaries of the proposed permanent Groundwater Management Area will cause Groundwater levels to decline to the extent that water rights holders cannot reasonably exercise their water rights;

b. current or projected Groundwater withdrawals from the aquifer or aquifers in the boundaries of the proposed Groundwater Management Area have reduced or will reduce Groundwater levels or surface water availability necessary for water rights holders to reasonably exercise their water rights;

c. current or projected Groundwater withdrawals from the aquifer or aquifers in the proposed permanent Groundwater Management Area have impaired or will impair Groundwater quality necessary for water right holders to reasonably exercise their water rights based on relevant water quality standards;

d. Groundwater within the proposed permanent Groundwater Management Area is not suitable for any beneficial use; or

e. public health, safety, or welfare is or will become at risk.

9. Monitoring and studies:

a. if the Board finds that sufficient facts, including monitoring information, are not available to designate a permanent Groundwater Management Area, the Board may designate a Temporary Groundwater Management Area to allow studies to obtain the facts needed to:

i. correct deficiencies that the Board identifies in a petition for a permanent Groundwater Management Area;

ii. determine the extent to which the criteria identified in subsection (8) are met or not met;

iii. determine appropriate control measures to implement to designate a permanent Groundwater Management Area.

b. the Board shall set the length of time that the Temporary Groundwater Management Area shall be in effect. The term of a Temporary Groundwater Management Area may be extended by the Board, but may not exceed a total of 6 years.

c. the Board shall determine the responsibility for funding the costs associated with subsection (9)(a). Any person on whom a funding responsibility is placed by the Board pursuant to this subsection may appeal that determination to a Court of Competent Jurisdiction, which shall review the determination for an abuse of discretion.

d. prior to designating a Temporary Groundwater Management Area, the Board shall provide notice and the opportunity for public hearing pursuant to the notice provisions of subsection (7) of this Section.

e. a Temporary Groundwater Management Area designation is for the purpose of monitoring and study and shall not include the control provisions set forth in subsection (10) of this Section, other than measurement, water quality testing, and reporting.

f. prior to expiration of a Temporary Groundwater Management Area, and subject to the limitations of subsection (9)(b) of this Section, the Board may amend or repeal the establishment of the Temporary Groundwater Management Area, or may designate a permanent Groundwater Management Area under this Section.

10. A permanent Groundwater Management Area may include, but is not limited to, one or more of the following provisions:

a. closing the permanent Groundwater Management Area to further appropriation of surface water and/or Groundwater;

b. restricting the development of future surface water and/or Groundwater appropriations within the permanent Groundwater Management Area;

c. prohibiting or restricting the issuance of Stock Water Allowances pursuant to Section 2-2-116 of this Ordinance;

d. prohibiting or restricting the issuance of Domestic Allowances pursuant to Section 2-2-117 of this Ordinance;

e. requiring measurement and reporting of future surface water or Groundwater appropriations within the permanent Groundwater Management Area;

f. requiring water conservation measures within the permanent Groundwater Management Area;

g. requiring mitigation of Groundwater withdrawals within the permanent Groundwater Management Area;

h. reporting data to the Board within the permanent Groundwater Management Area; and

i. other provisions that the Board determines are appropriate and adopts.

11. The Board, upon petition, may modify or repeal a Groundwater Management Area. Any petition seeking the modification or repeal of a permanent Groundwater Management Area must demonstrate by a preponderance of the evidence that current or projected recharge to the aquifer or aquifers or changes to current or projected Groundwater withdrawals from the aquifer or aquifers in the boundaries of an existing Groundwater Management Area justify modification or repeal of that Groundwater Management Area.

12. Appeal from any final decision of the Board concerning the designation, modification or repeal of any permanent Groundwater Management Area pursuant to this Section shall be as set forth in Section 2-2-112 of this Ordinance.

13. If the Board determines that it is appropriate for a Groundwater Management Area identified pursuant to this section to extend to an area adjacent to but outside the boundaries of the Reservation, the Board, through the Office of the Engineer, may petition the DNRC, pursuant to 85-2-506(2)(c)(i), MCA, to designate a Controlled Groundwater Area in that adjacent area. Designation or modification by the DNRC of a Controlled Groundwater Area in any such adjacent area shall be governed by the procedures set forth in 85-2-506, MCA.

1-1-110. Standards for Applications for Appropriation Rights and Changes in Use. For any application for an Appropriation Right or Change in Use that is not one of the categories of Appropriation Right identified in Sections 1-1-112(1) or 2-2-118 of this Ordinance, in addition to whatever information is required by specific provisions of the Ordinance, all applications for Appropriation Rights and Changes in Use must include:

1. An identification of the proposed beneficial use.

2. An identification of the source of water supply.

3. A project description, including an identification of any water right(s) to be changed to a new use, if applicable.

4. A legal description of the point of diversion and the place of use.

5. The monthly volume(s) and flow rate(s) of the water supply to be diverted, withdrawn, or impounded, and the monthly volume(s) to be consumed; however the Office of the Engineer may require a more frequent quantification time step.

6. The monthly historic diverted, withdrawn, or impounded volume(s) and flow rate(s) and the historically consumed volume(s) of the water right(s) to be changed to a new use, if applicable; however, the Office of the Engineer may require a more frequent quantification time step.

7. The calculations, references and methodologies used to determine the volume(s) and flow rate(s) in subsections (5) and (6) above.

8. Identification of physical water availability and existing legal demands on the source of supply of water.

9. Evidence that the proposed means of diversion, construction, and operation of the appropriation Works are adequate.

10. Evidence of possessory interest or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use, diverted, conveyed, impounded, stored, transported, withdrawn, used, and distributed.

11. Information showing that the water quantity or quality of an Appropriator will not be adversely affected, if applicable.

12. A United States Geological Survey (USGS) quadrangle map or United States Department of Agriculture (USDA) aerial photo must be included with the application.

a. The following items shall be clearly identified on the map:

(1) North arrow;
(2) Scale bar;
(3) Section corners and numbers;
(4) Township and range numbers;
(5) Property lines and ownership;
(6) Source(s);
(7) Point(s) of diversion;
(8) Means of conveyance;
(9) Place(s) of use;
(10) Place(s) of storage, if applicable;
(11) Surface water features;
(12) Measurement and instrument locations associated with the application; and
(13) The place(s) of use of all associated and supplemental water rights.

b. If the application is for a Change in Use, the site map shall also show the historic point(s) of diversion, place(s) of use, and place(s) of storage, as applicable.

c. Additional maps shall be submitted if the information on one map cannot convey the required information clearly and shall be of the same scale so the maps can be overlain.

1-1-111. Groundwater Diversion Standards

1. Wells:

a. Persons that drill, make, or construct Wells, including monitoring Wells, on the Reservation shall comply with Title 37 Chapter 43, MCA, and ARM 36 Chapter 21 licensing, conduct, and regulatory requirements, or any successor provisions promulgated in State law.

b. All Well construction on the Reservation shall meet the standards set forth in ARM 36 Chapter 21, or any successor provisions promulgated in State law.

c. Construction and operations of all Wells must comply with all applicable federal, State, Tribal, and local environmental regulations.

2. Developed Springs:

a. All Developed Spring collection components, including but not limited to infiltration galleries, infiltration basins, and French drains, shall be installed and buried under the surface of the ground.

b. All means of storage and conveyance, including but not limited to supply pipes, cisterns, and pump housings, shall be sealed and made impervious to water and designed in a manner that protects the source from backflow and surface contamination.

c. Open pits, ponds, or excavations shall not be used as a means of diversion for Developed Springs.

d. Construction and operation of all Developed Springs must comply with all applicable federal, State, Tribal, and local environmental regulations.

3. Aquifer Injection and Injection Wells are not allowed except when used exclusively for Heating/Cooling Exchange Wells.

1-1-112. Mitigation

1. Unless any provision of a Groundwater Management Area established pursuant to Section 1-1-109 of this Ordinance specifically requires Mitigation for any of the following categories of Appropriation Rights, Mitigation is not required for Appropriation of:

a. Redundant or Substitute Wells pursuant to Section 2-2-115 of this Ordinance;

b. Stock Water Allowances pursuant to Section 2-2-116 of this Ordinance;

c. Domestic Allowances pursuant to Section 2-2-117 of this Ordinance;

d. Heating/Cooling Exchange Wells pursuant Section to 2-2-119 of this Ordinance;

e. Temporary Emergency Appropriations pursuant to Section 2-2-120 of this Ordinance; or

f. Short-term uses of an Appropriation Right pursuant to Sections 2-2-121 and 2-2-122 of this Ordinance.

2. Mitigation is not required for Appropriation of Flathead System Compact Water Pursuant to 2-2-118 of this Ordinance.

3. Any Appropriation Right that results in a Net Depletion of either surface water or Groundwater shall offset the entire Net Depletion that results in adverse effect to any Appropriator through the use of Mitigation pursuant to a Mitigation Plan.

4. An adverse effect to a Wetland Protective Appropriation Right recognized in Article III.C.1.f of the Compact or a Wetland Protective Appropriation Right issued pursuant to Section 2-2-123 of this Ordinance that requires Mitigation shall include, but is not limited to, a water supply alteration that would cause:

a. reductions of the Wetland boundary in excess of the normal range of variability in water; or

b. unnatural Wetland plant community change.

5. A Mitigation Plan must include:

a. a plan of use for the proposed Appropriation Right for which the Mitigation Plan is required;

b. an identification of the location, volume, and timing (by monthly or more frequent time step as determined by the Engineer) of the adverse effect to be mitigated;

c. if necessary, evidence that an application for a Change in Use has been submitted;

d. the amount of water reallocated through exchange or substitution that is required to mitigate the adverse effect;

e. evidence that the water for Mitigation is legally and physically available;

f. evidence of how the Mitigation Plan will offset the Net Depletion in a manner that will offset any adverse effect to any Appropriator; and

g. evidence that the necessary water quality permits, if any, have been applied for pursuant to the Tribal Water Quality Management Ordinance.

6. No applicant for an Appropriation Right shall be required to provide more Mitigation than the quantity needed to offset the adverse effects of that proposed new Appropriation Right on any Appropriator.

7. Compliance with a Mitigation Plan and proof of any water quality permit(s) issued pursuant to the Tribal Water Quality Management Ordinance, if applicable, must be included as a written condition on any Appropriation Right or Change in Use authorization that is conditioned on Mitigation.

8. If compliance with a Mitigation Plan or any applicable water quality permit(s) issued pursuant to the Tribal Water Quality Management Ordinance ceases or terminates, the holder of the Appropriation Right conditioned on compliance with the Mitigation Plan shall immediately notify the Office of the Engineer, and use of the Appropriation Right shall be suspended immediately until a new Mitigation Plan is approved and implemented pursuant to this Ordinance.

1-1-113. Codification, Severability and Defense.

1. The provisions of this Ordinance are severable, and a finding of invalidity of one or more provisions hereof shall not affect the validity of the remaining provisions.

2. This Ordinance is intended to function in conjunction with the legislation adopted by the Confederated Salish and Kootenai Tribes pursuant to Tribal approval of the Confederated

Salish and Kootenai Tribes-Montana Compact and the Montana Water Use Act of 1973 to effectuate Unitary administration and Management on the Flathead Indian Reservation. Should those portions of the parallel Tribal Legislation be amended by subsequent legislation without contemporaneous and materially identical State amendment to this Ordinance, this Ordinance shall govern the use of waters within the Reservation, irrespective of the amended provisions of Tribal law, until such time as the laws of the Tribes and the State are rendered mutually consistent. Similarly, should this Ordinance be amended without contemporaneous and materially identical amendment of the provisions adopted into Tribal law, those pre-existing provisions of Tribal law shall govern the use of waters within the Reservation, irrespective of the amended provisions, until such time as the laws of the Tribes and the State are rendered mutually consistent.

3. Any amendment to this Ordinance that is approved by the Tribes, the State and the Secretary is pursuant to, and shall not be deemed a modification of, the Compact.

4. The State adopts this Ordinance only after concluding its provisions are lawful. Should the legality of the Ordinance, or parallel Tribal legislation, or any provision thereof be challenged in any court, the parties shall use their best effort jointly to defend the enforceability of the Ordinance, the parallel Tribal legislation and each of the respective provisions.

1-1-114. Effective Date. This Ordinance and each provision hereof according to its terms shall take on the Effective Date of the Compact.

PART 2 - UNITARY ADMINISTRATION AND MANAGEMENT

1-2-101. Purpose. The purpose of this Part is to establish the processes applicable to all surface and Groundwater use within the exterior boundaries of the Flathead Indian Reservation.

1-2-102. Establishment and Composition of the Water Management Board. Pursuant to Article IV.I of the Compact, the Water Management Board is established.

1-2-103. Qualifications of Board Members. As set forth in Article IV.I.2.f of the Compact:

1. A Board member shall be over 18 years of age.

2. A Board member shall be a Reservation resident, which means, for the purposes of filling a position on the Board, an individual who:

a. does business within Flathead Indian Reservation boundaries;

b. is domiciled within Flathead Indian Reservation boundaries; or

c. owns and maintains a seasonal residence within Flathead Indian Reservation boundaries.

3. No elected official of the State of Montana, or any political subdivision thereof, or of the United States, or of the Tribes is eligible for nomination to the Board while holding such elective office. However, a nominee for Board membership shall not be disqualified by reason of the fact that he or she is an employee or contractor of the State of Montana or any political subdivision thereof, or of the Tribes, or of the United States.

4. A Board member shall have education and experience in one or more of the following fields: natural resources management, public administration, agriculture, engineering, commerce or finance, hydrology, biological sciences, water law or water policy.

5. No Board member may vote on any application or appeal that the member participated in personally and substantially in any non-Board capacity.

1-2-104. Public Meetings and Records. As set forth in Article IV.I.7 of the Compact:

1. Notwithstanding any other provisions of law, the Board is a public agency for purposes of the applicability of State and Tribal right to know laws.

2. All regular and special meetings of the Board, including all hearings conducted by the Office of the Engineer or the Board pursuant to the provisions of Chapter 2 Part 2, and Chapter 3 of this Ordinance, shall be open to the observation of the general public pursuant to State and Tribal open meeting laws. Where there is a conflict of laws, the law that provides for greater openness to the public applies.

3. Where no more specific notice provisions are set forth in this Ordinance, notice of any meeting, including a draft agenda, shall be provided to the public in a manner and on a timeframe consistent with the criteria set forth in State and Tribal law. Where there is a conflict of laws, the law that provides for earlier notice shall apply.

4. The Board shall keep the following records:

a. minutes of all meetings;

b. recordings of all hearings conducted by the Board or the Office of the Engineer pursuant to the provisions of Chapter 2 Part 2, and Chapter 3 of this Ordinance;

c. all documents filed with or generated by the Board or the Office of the Engineer pursuant to this Ordinance;

d. any other records required by applicable provisions of State or Tribal law, provided that if there is a conflict of laws, the law that provides for more expansive record retention shall apply.

5. All Board records are public records and shall be made available to the public for inspection under such reasonable terms and conditions as the Board shall establish.

1-2-105. Compensation and Expenses of the Board. As set forth in Article IV.I.2.h of the Compact, each Board member shall receive such compensation for services and reimbursement for expenses for attendance at Board meetings as shall be fixed by the State and the Tribal Council for the Board members appointed by the same. The compensation for the fifth Board member shall set jointly by the State and the Tribal Council. The compensation and expenses of the Federal ex officio member shall be paid by the United States.

1-2-106. Quorum and Voting of the Board. As set forth in Article IV.I.3 of the Compact, four voting members of the Board shall constitute a quorum. No Board action may be voted upon in the absence of a quorum. All Board decisions shall be by affirmative vote of a majority of the Board. If a proposal put to a vote of a quorum of Board members ends in a tie vote, the proposal, or matter under consideration is deemed disapproved or denied.

1-2-107. Powers and Duties of the Board.

1. The Board shall have those powers and duties set forth in Article IV.I.4 and 5 of the Compact and in this Ordinance, including those powers necessary and proper to carry out all Board responsibilities as set forth in the Compact and this Ordinance.

2. As set forth in the Compact, the Board shall have exclusive jurisdiction to resolve any controversy as between the Parties or between or among holders of Appropriation Rights and Existing Uses on the Reservation over the meaning and interpretation of the Compact and this Ordinance.

1-2-108. Technical Assistance to the Board and the Engineer. The NRD and the DNRC shall, within the limits of their respective expertise and resources, and when so requested by the Board or the Office of the Engineer, collect, compile, and analyze information related to waters of the Reservation, their use, and the Works associated with their use, and produce reports and provide technical assistance and advice to the Board or the Office of the Engineer.

1-2-109. Qualifications of the Water Engineer.

1. The Water Engineer shall be a professional in one or more of the following water resources or management related fields:

a. water resources management;
b. hydrology;
c. hydrogeology;
d. environmental science;
e. business or public administration;
f. biological science;
g. civil engineering;
h. environmental engineering; or
i. law.

2. The Water Engineer shall have a minimum of a bachelor's degree with 10 years of increasingly responsible experience, including three years of management experience, or a master's degree with seven years of increasingly responsible experience, including three years of management experience, or an appropriate combination of education and experience.

3. The Water Engineer shall have the skill to deal with a diverse and sometimes contentious public.

4. The Water Engineer shall have the ability to:

a. successfully manage the water resources staff;
b. provide technical assistance to the Board; and
c. act as a hearings officer and document decisions and orders in writing.

1-2-110. Duties of the Engineer. The Engineer shall be an employee of the Board and shall exercise the duties set forth in the Compact and this Ordinance, and as assigned by the Board pursuant to the Compact and this Ordinance. These duties include, but are not limited to:

1. The administration of water rights on the Reservation, and the enforcement of the terms of this Ordinance and the conditions of all Appropriation Rights, determinations, orders, regulations, plans, policies, guidelines, and other actions taken by the Engineer or the Board, pursuant to the Compact and this Ordinance;

2. Coordination with the Project Manager, as far as practicable, of the operations of the FIIP with the administration and enforcement of water rights outside of the FIIP;

3. The supervision and management of Staff; and

4. The development and submission to the Board of budget requests for approval by the Board and forwarding to the Tribes and State for the purpose of securing necessary appropriations.

1-2-111. Immunity from Suit. Members of the Board, the Engineer, any Designee, any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, and any Staff shall be immune from suit for damages arising from the lawful discharge of an official duty associated with the carrying out of powers and duties set forth in the Compact or this Ordinance relating to the authorization, administration or enforcement of water rights on the Reservation.

1-2-112. Filing Fees. A filing fee shall be paid at the time an application is filed with the Office of the Engineer under Section 2-1-107, 2-2-104, 2-2-115, 2-2-116, 2-2-117, 2-2-118, 2-2-119, 2-2-123, or 2-2-124 of this Ordinance. The amount of the fee shall be the same as the fee charged by DNRC for the same type of application under State law, as those fees may be modified from time to time by the DNRC. The Board shall post notice of the applicable amount of these fees at the Office of the Engineer and on the Board's website.

CHAPTER II
WATER USE

PART 1 - GENERAL PROVISIONS

2-1-101. Registration of Uses of the Tribal Water Right in Existence as of the Effective Date of the Compact.

1. Pursuant to Article III.C.1.b of the Compact, the Tribes, each Tribal Member, and each Allottee who claims to have an Existing Use of waters of the Reservation which is part of the Tribal Water Right shall file a registration of Existing Use of the Tribal Water Right with the Engineer. Uses of the Tribal Water Right for which abstracts are appended to this Compact, including uses on the FIIP, are exempt from this registration requirement.

2. Historically irrigated allotments with serviceable delivery systems that are held by individuals and in trust by the United States, and are not served by the FIIP, shall be eligible to be registered pursuant to the provisions of Sections 2-1-101 et seq. of this Ordinance even if such allotments are not being irrigated on the Effective Date of the Compact.

3. The NRD shall provide assistance to the Tribes, Tribal Members, and Allottees in preparing registrations of Existing Uses of the Tribal Water Right for filing.

4. No Tribal Member or Allottee may exercise, for the same water use, both a registration of Existing Use of the Tribal Water Right and a Water Right Recognized Under State Law.

2-1-102. Process for Registration of Existing Use of the Tribal Water Right.

1. The Tribes, Tribal Members, and Allottees claiming a use of water that falls under the terms of Section 2-1-101 of this Ordinance shall, within five years of the Effective Date of this Ordinance, file a Registration Form with the Board documenting the registration of Existing Use of the Tribal Water Right and identifying:

a. the rate and volume of water used;
b. the source of supply for the use;
c. the point of diversion by legal land description;
d. the place of use by legal land description;
e. the period of use;
f. the period of diversion;
g. the place of storage (if applicable);
h. the capacity of storage (if applicable);

i. the purpose; and

j. the means of diversion.

2. Upon receipt, the Board shall transmit the Registration Form to the Office of the Engineer.

3. Upon receipt of the Registration Form, the Office of the Engineer shall review the Registration Form within 180 days and may either issue a Registration Certificate or return a defective Registration Form to the filer, together with the reasons for returning it. Upon receiving a corrected Registration Form, the Office of the Engineer has 90 days from the certified receipt of the corrected Registration Form to issue a Registration Certificate or reject the registration. If the Office of the Engineer neither issues a Registration Certificate nor rejects the registration within the initial 180 day review period, the Registration Form shall be deemed approved and the Board shall issue a Registration Certificate. If the Office of the Engineer neither issues a Registration Certificate nor rejects the registration within 30 days of certified receipt of a corrected Registration Form, the Registration Form shall be deemed approved and the Board shall issue a Registration Certificate.

4. Any Person filing a Registration Form or a corrected Registration Form with the Office of the Engineer pursuant to subsections (1) and (3) of this Section who is dissatisfied with the rejection of that corrected Registration Form by the Office of the Engineer pursuant to subsection (3) of this Section may appeal that rejection to the Board by filing a notice of appeal to the Board within 30 days of the rejection of the corrected Registration Form. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

5. Any appeal to the Board filed pursuant to subsection (4) of this Section shall be conducted pursuant to the provisions of Section 3-1-104 of this Ordinance.

2-1-103. Fee for Filing Registration of Existing Use of the Tribal Water Right. The Board shall not charge a fee for the processing of registrations or corrected registrations of Existing Uses of the Tribal Water Right.

2-1-104. Tribal Member and Allottee Entitlements Pursuant to 25 U.S.C. Section 381. All Tribal Members' and Allottees' entitlements pursuant to 25 U.S.C. Section 381 are hereby recognized and confirmed. The attributes of these entitlements shall be defined through either:

1. the process set forth in Section 2-1-101 et seq. of this Ordinance, if the Tribal Member or Allottee with an entitlement pursuant to 25 U.S.C. Section 381 also has a use of water eligible for the registration process set forth in those sections of this Ordinance; or

2. by applying for a New Appropriation as provided in Section 2-2-101 et. seq. of this Ordinance or by applying to develop a use of Flathead System Compact Water as provided in Section 2-2-118 of this Ordinance, if the Tribal Member or Allottee with an entitlement pursuant to 25 U.S.C. Section 381 does not have a use of water eligible for the registration process set forth in Section 2-1-101 et seq. of this Ordinance.

2-1-105. Tribal, Tribal Member and Allottee Challenge of a Registration Certificate Issued by the Office of the Engineer. The Tribes, Tribal Members, and Allottees may seek judicial review of any final decision by the Board pursuant to Section 2-1-102(4) of this Ordinance by filing a petition for judicial review with the Tribal Court of the Tribes within 30 days of the issuance of the final Board decision. In considering the petition, the Board's legal conclusions shall be reviewed for correctness and its factual findings for abuse of discretion.

2-1-106. Registration of Certain Other Previously Unrecorded Existing Uses. Persons who have Existing Uses on the Reservation as of the effective date of this Ordinance shall register such Existing Uses with the Board if those uses:

1. Were not required to be filed, pursuant to 85-2-222, MCA, and in fact were not filed as claims in the Montana General Stream Adjudication for a pre-1973 use of water arising under State law; or

2. Were developed on or after July 1, 1973, at a volume and flow rate that would qualify as an exception to the permit requirements of 85-2-306, MCA, and for which a notice of completion of Groundwater development (DNRC Form 602) or an application for provisional permit for completed Stock Water pit or reservoir (DNRC Form 605) was filed with the DNRC but not processed by the DNRC.

3. Were developed after July 1, 1973, at a volume and flow rate that would qualify as an exception to the permit requirements of 85-2-306, MCA, and for which a notice of completion of Groundwater development (DNRC Form 602) or an application for provisional permit for completed Stock Water pit or reservoir (DNRC Form 605) was not filed with the DNRC.

2-1-107. Process for Registration of Certain Other Previously Unrecorded Existing Uses.

1. Each Person claiming an Existing Use of water that falls under the terms of Section 2-1-106 of this Ordinance shall, within 180 days of the effective date of this Ordinance, file a Registration Form with the Board documenting that the Existing Use is for a purpose and with a flow rate and volume that falls within the terms of Section 2-1-106, and identifying:

a. the date of first use of the water;

b. the source of supply for the use;

c. the point of diversion by legal land description;

d. the place of use by legal land description; and

e. the period of use.

2. Within 30 days of the Effective Date, the DNRC shall transmit to the Board all filed but not processed completion notices (DNRC Form 602 or 605) it has received for water uses excepted from the permitting requirements of State law developed within the boundaries of the Reservation after August 22, 1996. The transmission of these notices shall constitute compliance with Section 2-1-107(1) of this Ordinance for those uses eligible for registration pursuant to Section 2-1-106(2) of this Ordinance. No additional fee shall be required for the processing of the forms transmitted by the DNRC.

3. Upon receipt, the Board shall transmit the Registration Form to the Office of the Engineer.

4. Upon receipt of the Registration Form, the Office of the Engineer shall review the Registration Form within 180 days and may either issue a Registration Certificate or return a defective Registration Form to the filer, together with the reasons for returning it. If a corrected Registration Form is submitted within 30 days of its return by the Engineer, no new filing fee shall be required. Upon receiving a corrected Registration Form, the Office of the Engineer has 90 days from the certified receipt of the corrected Registration Form to issue a Registration Certificate or reject the registration. If the Office of the Engineer neither issue a Registration Certificate nor rejects the registration within the initial 180 day review period, the Registration Form shall be deemed approved and the Board shall issue a Registration Certificate. If the Office of the Engineer neither issues a Registration Certificate nor rejects the registration within 90 days of certified receipt of a corrected Registration Form, the Registration Form shall be deemed approved and the Board shall issue a Registration Certificate.

5. For any use registered under Section 2-1-106(1) of this Ordinance, the priority date of the use shall be the date of first beneficial use, and such a date shall be reflected on the Registration Certificate.

6. For any use under Section 2-1-106(2) of this Ordinance, the priority date for the use shall be the date of filing of the appropriate form, and such a date shall be reflected on the Registration Certificate.

7. For any use under Section 2-1-106(3) of this Ordinance, the priority date for the use shall be the Effective Date of the Compact, and that date shall be reflected on the Registration Certificate.

8. Any Person filing a corrected Registration Form with the Office of the Engineer pursuant to subsection (2) of this Section who is dissatisfied with the rejection of that corrected Registration Form by the Office of the Engineer pursuant to subsection (2) of this Section may appeal that rejection to the Board by filing a notice of appeal to the Board within 30 days of the rejection of the corrected Registration Form. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

9. Any appeal to the Board filed pursuant to subsection (6) of this Section shall be conducted pursuant to the provisions of Section 3-1-104 of this Ordinance.

2-1-108. Failure to Register an Existing Use of Water. Failure to register an Existing Use that is subject to registration as provided for under Sections 2-1-101, 2-1-102, and 2-1-106(2) and (3) of this Ordinance, shall divest the holder of the Existing Use of any legal protections otherwise afforded under the Compact and this Ordinance, to the extent not inconsistent with federal law.

2-1-109. Limitation to Beneficial Use. Beneficial use shall be the basis, measure and limit to Appropriation Rights issued pursuant to this Ordinance.

2-1-110. No Adverse Possession. No right to use water within the Reservation may be acquired by prescription or by adverse possession of use.

2-1-111. Abandonment of Appropriation Right.

1. No part of the Tribal Water Right is subject to abandonment by nonuse.

2. If an Appropriator, other than a user of any portion of the Tribal Water Right, ceases to use all or a part of an Appropriation Right, or any Existing Use, with the intention of wholly or partially abandoning the right, or if the appropriator ceases using the right according to its terms and conditions with the intention of not complying with those terms and conditions, the Appropriation Right or Existing Use is, to the extent of the nonuse, considered abandoned and must immediately expire.

3. If an Appropriator, other than a user of any portion of the Tribal Water Right, ceases to use all or part of an Appropriation Right or Existing Use, or ceases using the Appropriation Right or Existing Use according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the Appropriator has abandoned the right for the part not used.

4. If an Appropriator ceases to use all or part of an Appropriation Right or Existing Use in compliance with a candidate conservation agreement initiated pursuant to 50 CFR 17.32 or because the land to which the water is applied to a beneficial use is contracted under a state, tribal, or federal conservation, mitigation, or set-aside program:

a. the land set-aside and resulting reduction in use of the Appropriation Right or Existing Use from the conservation, mitigation, or set-aside program shall not be construed as an intent by the appropriator to wholly or partially abandon the Appropriation Right or Existing Use or to not comply with the terms and conditions attached to the right; and

b. the period of nonuse that occurs for part or all of the Appropriation Right or Existing Use as a result of the conservation, mitigation, or set-aside program shall not create and shall not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

2-1-112. Procedure for Declaring Abandonment.

1. An Appropriator who claims to have been or alleges will be injured by the resumption of use of an Appropriation Right or Existing Use alleged to have been abandoned may file a petition with the Office of the Engineer to declare the Appropriation Right or Existing Use abandoned in whole or in part. Upon receipt of the petition, the Office of the Engineer shall date stamp it.

2. If the Engineer or Designee finds that the petition provides enough information to give rise to a question of abandonment, the petition shall be posted on the Board's website within 10 working days of the determination of validity. If the Engineer or Designee finds that the petition fails to provide enough information to give rise to a question of abandonment, the petition shall be rejected.

3. Upon a finding of validity pursuant to subsection (2) of this Section, a hearing shall be set within 180 days of the determination of validity, or any extended period of time, not to exceed 90 days, granted by the Engineer, for the Engineer or Designee to determine whether the Appropriation Right or Existing Use has been abandoned. Discovery prior to hearing will be as provided by the Engineer or Designee, and may commence following the notice of the hearing.

4. The owner of the right alleged to have been abandoned shall be personally served notice of the hearing by the Office of the Engineer and the hearing shall be publicly noticed by the Office of the Engineer once via a legal notice in a local newspaper of general circulation and posted by the Office of the Engineer on the Board's website for a period of 10 days commencing not less than 30 days from the date of the hearing.

5. At the hearing on the petition, the burden of proof shall be on the petitioner who must prove by a preponderance of the evidence that the Appropriation Right or Existing Use has been abandoned pursuant to Section 2-1-111 of this Ordinance, unless a prima facie presumption of abandonment has arisen pursuant to Section 2-1-111(3). In such circumstances, the burden of

proof is shifted to the owner of the right alleged to have been abandoned, who must prove by a preponderance of the evidence a lack of intent to abandon the right in question.

6. The hearing shall be recorded electronically and an official record maintained. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

7. A written decision by the Engineer or Designee shall be rendered within 60 days of the hearing, disseminated to the parties, and posted by the Office of the Engineer on the Board's website within 10 days of its issuance. If the individual who conducted the hearing becomes unavailable to the Office of the Engineer, a decision may be prepared by an individual who has read the record only if the demeanor of witnesses is considered immaterial by all parties; if any party considers the demeanor of any witness to be material to the resolution of the appeal, a new hearing must be held.

8. Any party to the abandonment hearing dissatisfied with the decision of the Engineer or Designee may appeal to the Board (and become an appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

9. Appeal to the Board pursuant to subsection (8) of this Section, shall be made and resolved pursuant to the provisions of Section 2-2-111 of this Ordinance.

10. Any petitioner whose petition is rejected by the Engineer or Designee as failing to provide enough information to give rise to a question of abandonment may appeal the Engineer's decision to the Board pursuant to the provisions of Section 3-1-104 of this Ordinance.

2-1-113. Prevention of Waste and Interference with Lawful Use.

1. Waters within the Reservation may not be wasted, nor may water be used unlawfully, nor may a lawful use of water be interfered with.

2. All facilities, Works and equipment associated with the withdrawal, impoundment, pumping, diversion, drainage, or transmission of waters on the Reservation shall be so constructed, installed, and maintained as to prevent the Waste, contamination, or pollution of surface and Groundwater and to avoid injury to the lands and property of others. All wells, producing and non-producing, which may contaminate other surface or Groundwater must be properly abandoned or upgraded with a sanitary seal, in accordance with the water well criteria incorporated by reference in Section 1-1-111 of this Ordinance. All flowing wells shall be capped or equipped with valves so that the flow of water can be stopped when the water is not being put to beneficial use.

3. The Board, on its own initiative or through the Office of the Engineer, may require the recipient of any Appropriation Right issued pursuant to this Ordinance to construct or install a weir, head gate, valve, meter, gauge, or other reasonable and appropriate device for the control and measurement of water and for the prevention of Waste.

2-1-114. Issuance of Appropriation Right Does Not Constitute Permission to Trespass. The issuance of an Appropriation Right pursuant to this Ordinance does not constitute a license or permission to trespass on land which the holder of the Appropriation Right does not otherwise have a legal right to access, not does it constitute a ditch right.

2-1-115. Development of Enforceable Schedule for the Tribes' Other Instream Flow Rights.

1. As set forth in the Compact, each of the Tribes' instream flow rights identified in Article III.C.1.d.iii of the Compact shall not be enforceable until after an enforceable schedule for that stream reach is promulgated pursuant to the process set forth in this Section. This process shall not commence for any stream reach until the Compact has been finally approved by the Montana Water Court, and until the Montana Water Court has issued a final decree for the water court basin (76L or 76LJ) in which that stream reach lies, including the expiration of all time for appeals, or the resolution of any such appeal, whichever date is latest (the "Eligibility Date").

2. At any time after the Eligibility Date, the Tribes may initiate the enforceable schedule process for any given stream reach included in the rights identified in Article III.C.1.d.iii of the Compact by:

a. providing notice to water rights holders in the reach of the Tribes' initiation of the process to finalize and implement the enforceable schedule;

b. developing a full summary of all Water Rights Arising Under State Law in the reach, including a monthly time-step pattern of water use;

c. developing a summary of streamflow conditions, at or near each enforceable schedule compliance point within the reach area, utilizing:

i. streamflow gaging information; or

ii. an accepted hydrologic analysis procedure to estimate streamflow conditions. The method to develop streamflow information will be based on the professional judgment of the Tribes' hydrologist responsible for coordinating the enforceable schedule process; and

d. preparing a report on the availability of water to fulfill the Tribes' instream flow water right for that reach area.

3. The Tribes shall prepare each proposed enforceable schedule based on a water budget that allows valid water rights to be exercised.

4. The Tribes shall hold one or more public meetings, and provide timely advanced notice to affected water users of each such meeting, to report on the completion of the water availability study and the proposed enforceable schedule for that reach area.

5. The Tribes shall consider the public comment received either at the public meeting(s) or within 30 days thereafter, and shall finalize the proposed enforceable schedule for a given reach area no fewer than 45 days after the day of the last public meeting.

6. The Tribes shall provide written notice to the Engineer of the finalized proposed enforceable schedule, including an explanation of the technical basis therefore. Upon receipt, the Engineer shall forward the proposed enforceable schedule to Staff for review.

7. Staff, using information from the written notice, as well as their own compilation of independent resources and analysis, if available, shall issue a recommended decision as to whether to adopt the enforceable schedule within 90 days of the date of the written notice provided by the Tribes pursuant to subsection (6) of this Section.

8. If the recommended decision is to adopt the enforceable schedule, a summary of the proposed enforceable schedule and the recommended decision shall be publicly noticed by the Office of the Engineer once via a legal notice in a local newspaper of general circulation and posted by the Office of the Engineer on the Board's website for a period not less than 45 days from the date the recommendation is issued. A summary of the proposed enforceable schedule and the recommended decision shall also be distributed electronically to individuals or entities who have registered with the Board to receive electronic notice. If no objections are filed within 45 days of the initial Publication of the recommended decision by the Office of the Engineer, or if all filed objections are unconditionally withdrawn prior to being ruled upon, the application shall be granted by the Engineer or Designee within 10 days after expiration of the time for filing objections or after the unconditional withdrawal of the last objection, whichever date is later.

9. Objections to a proposed enforceable schedule may be filed only by holders of water rights in the particular stream reach for which the enforceable schedule is proposed. The only cognizable ground for objection is that the proposed enforceable schedule will have an adverse effect on the objector's water right. An objection must describe the alleged adverse effect on the objector's water right. The burden of proof shall be on the objector.

10. An objector or the Tribes may elect to have any valid objection decided on the record or after hearing. If the objector elects to have a hearing, that request must be made at the same time as the filing of the objection or the objector's right to a hearing is waived. The Tribes must invoke the right to a hearing within 10 days of receiving notice of the objection or the Tribes' right to a hearing is waived.

11. Discovery prior to hearing will be as provided by the Engineer or Designee, and may commence following the receipt of a valid objection.

12. The Engineer or Designee, after issuance of notice of hearing, may not communicate with any party to that case or any party's representative(s) in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate.

13. The hearing shall be recorded electronically and an official record maintained.

14. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

15. A written decision by the Engineer or Designee shall be rendered within 60 days of the hearing, disseminated to the parties, and posted by the Office of the Engineer on the Board's website within 10 days of its issuance. If the individual who conducted the hearing becomes unavailable to the Office of the Engineer, a decision may be prepared by an individual who has read the record only if the demeanor of witnesses is considered immaterial by all parties to the case. If any party considers the demeanor of any witness to be material to the resolution of the appeal, a new hearing must be held.

16. The Tribes or any objector dissatisfied with the final decision of the Engineer or Designee may appeal to the Board (and become an appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped. Appeal to the Board shall be resolved pursuant to the provisions of Section 2-2-111 of this Ordinance.

17. If the recommended decision is to reject the proposed enforceable schedule, the Tribes may withdraw the proposed enforceable schedule within 10 days of the issuance of the recommended decision, or may appeal the recommended decision to the Engineer by filing a notice of appeal within 30 days of issuance of the recommended decision. The Tribes may elect to have the appeal decided on the record, after submission of additional evidence and argument, or after hearing. If the Tribes elect to have a hearing, that request must be made at the same time as the filing of the notice of appeal or the right to a hearing is waived. The notice of appeal must specify those parts of the recommended decision claimed to be in error.

18. Within 60 days from the filing of the notice of appeal, or any extended period of time, not to exceed 60 days, granted by the Engineer or Designee, the Tribes may submit additional factual evidence and legal argument in support of the proposed enforceable schedule. Staff who issued the recommended decision shall have 45 days from the Tribes' submission to revise, amend, or affirm the recommended decision in a second recommended decision that explains in writing the rationale for the second recommended decision.

19. If the recommended decision or second recommended decision is to reject the proposed enforceable schedule and no notice of appeal is filed pursuant to this Section, the proposed enforceable schedule shall be deemed rejected the day after expiration of the time for filing a notice of appeal. The rejection of a proposed enforceable schedule does not preclude the Tribes from filing another proposed enforceable schedule for the same or any other stream reach identified in the rights set forth in Article III.C.1.d.iii of the Compact.

20. The Tribes bear the burden of demonstrating to the Engineer or Designee by a preponderance of the evidence, whether a hearing is held or not, that the recommended decision or second recommended decision is in error.

21. If the Tribes request a hearing before the Engineer or Designee, a hearing shall be held no later than the latest of the following:

a. 90 days after the filing of the notice of appeal; or

b. 30 days after the issuance of a second recommended decision pursuant to subsection (2) of this Section, whichever is later.

22. The hearing shall be recorded electronically and an official record maintained. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably

prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

23. A decision by the Engineer or Designee to reverse, modify, or affirm the recommended decision or the second recommended decision shall be made in writing within 60 days after the later of:

a. the filing of a notice of appeal pursuant to subsection (1) of this Section;

b. the submission of additional evidence or legal argument pursuant to subsection (2) of this Section;

c. issuance of Staff's second recommended decision; or

d. the completion of the hearing.

24. If the Engineer or Designee reverses the recommended decision or the second recommended decision, and determines that the enforceable schedule should not have been rejected, the proposed enforceable schedule shall be publicly noticed to the public and processed pursuant to the provisions of subsections (8)-(16) of this Section.

25. If the Engineer or Designee affirms the recommended decision or the second recommended decision, resulting in the rejection of the proposed enforceable schedule, the Tribes may either accept that decision by withdrawing the proposed enforceable schedule or taking no further action, or may appeal that decision to the Board pursuant to Section 2-2-111 of this Ordinance. If no timely notice of appeal is filed, the proposed enforceable schedule shall be deemed rejected on the day after the expiration of the time to file the notice of appeal.

26. Any final Board decision on implementation of the enforceable schedule made pursuant to the process outlined in this Section may be appealed pursuant to Section 2-2-112 of this Ordinance.

PART 2 - PERMIT AND CHANGE APPLICATION PROCESS

2-2-101. Appropriation Rights and Change in Use authorizations on the Reservation. After the Effective Date, a Person within the exterior boundaries of the Reservation may not Appropriate surface water or Groundwater for a new beneficial use, or change an Existing Use, or commence construction of diversion, impoundment, withdrawal, or related distribution Works except by applying for and receiving an Appropriation Right, or Change in Use authorization, from the Board.

2-2-102. Burden of Proof for Ground or Surface Water Permits and Change Authorizations.

1. For any application for an Appropriation Right or Change in Use that is not one of the categories of Appropriation Right identified in Sections 1-1-112(1) or 2-2-118 of this Ordinance, applicants for an Appropriation Right, or for a Change in Use authorization must prove by a preponderance of the evidence that the proposed new Appropriation Right or Change in Use authorization will not adversely affect any Appropriator.

2. For any application for an Appropriation Right or Change in Use that is not one of the categories of Appropriation Right identified in Sections 1-1-112(1) or 2-2-118 of this Ordinance, the Board, Engineer, or Designee may modify or condition the issuance of Appropriation Right or Change in Use authorization applied for, to assure that:

a. the new Appropriation Right or Change in Use authorization will not adversely affect any Appropriator;

b. the proposed means of diversion, construction, and operation of the appropriation Works are adequate;

c. except in the case of instream flows or other non-consumptive uses, the applicant has the possessory interest or the written consent of the Person(s) with possessory interest in the property where the water is to be put to beneficial use;

d. the water quality of an Appropriator will not be adversely affected;

e. the proposed use will be consistent with the classification of water set for the source of supply pursuant to water quality standards established under the federal Clean Water Act, 33 USC Section 1251 et seq., and contained in regulations promulgated under the Confederated Salish and Kootenai Tribes' Water Quality Management Ordinance, Tribal Ordinance 89B; and

f. the proposed Appropriation Right or Change in Use authorization will not impair the ability of a discharge permit holder to satisfy effluent limitations set forth in a permit issued in accordance with water quality standards established under the federal Clean Water Act, 33 USC Section 1251 et seq., and contained in regulations promulgated under the Confederated Salish and Kootenai Tribes' Water Quality Management Ordinance, Tribal Ordinance 89B.

2-2-103. Pre-Application Meeting with Office of the Engineer. Prior to applying to the Board for a new Appropriation Right or Change in Use authorization, within the exterior boundaries of the Flathead Reservation, applicants may meet informally with Staff regarding the application process and information requirements.

2-2-104. Application to Board.

1. An applicant for a new Appropriation Right or Change in Use authorization must:

a. pay the appropriate application fee in the amount set by the Board;

b. fill out completely:

i. the Flathead Reservation Appropriation Right Application; or

ii. the Flathead Reservation Application for a Change in Use authorization; and

iii. all applicable addenda;

c. attach to each application all required maps; and

d. sign, date, and notarize or otherwise swear under appropriate oath to the accuracy of the contents of each application.

2. Upon the day of the receipt of an application, or amendment to an application, for a new Appropriation Right or Change in Use authorization, the Office of the Engineer must stamp it received.

3. If an application for a new Appropriation Right is ultimately granted, the priority date of the application is the date the application is stamped received by the Office of the Engineer.

4. All application forms may, upon recommendation by the Engineer, be modified by a unanimous vote of the Board. Any such modification is pursuant to and does not constitute a modification of this Ordinance or the Compact.

2-2-105. Adequate to Process Review.

1. Within 30 days of receipt by the Office of the Engineer of an application for a new Appropriation Right or Change in Use authorization, Staff shall review the application and make a determination whether the application is adequate to process. An application is adequate to process if it:

a. clearly identifies the proposed project; and

b. contains the information required by the following forms:

i. Flathead Reservation Appropriation Right Application, including for Groundwater applications Addendum B - "Flathead Reservation Groundwater Minimum Aquifer Testing Requirements"; or

ii. Flathead Reservation Application for a Change in Use authorization.

2. Staff may waive aquifer testing requirements if sufficient hydrogeologic information already exists on the source and in the location of the proposed development.

3. An application determined to be adequate to process shall be posted on the Board's website within 10 working days of the determination of adequacy.

2-2-106. Not Adequate to Process Determination.

1. If Staff determines an application for a new Appropriation Right or Change in Use authorization is not adequate to process, the Office of the Engineer shall send a letter to the applicant notifying the applicant of the defects in the application.

2. An applicant has 90 days from the date of mailing of the notice of inadequacy pursuant to subsection (1) of this Section to make the application adequate to process. An application for a new Appropriation Right whose defects are timely corrected and which is ultimately granted retains its priority of the date of the initial application.

3. Upon receipt of the information from the applicant to correct deficiencies, Staff must review the updated application and make a determination within 30 days whether the application is adequate to process.

4. An application that is not timely made adequate to process, either through the applicant's failure to respond to the notice of inadequacy issued pursuant to subsection (1) of this Section within the timeframe set forth in subsection (2) of this Section, or by the applicant's failure to provide sufficient information in response to a notice of inadequacy issued pursuant to

subsection (1) of this Section within the timeframe set forth in subsection (2) of this Section, shall be deemed denied.

5. An applicant who disagrees with the decision to deny may appeal that decision to the Board pursuant to Section 3-1-104 of this Ordinance. If such an appeal is filed, the Engineer shall be the appellee.

2-2-107. Application Analysis and Recommended Decision.

1. Prior to the expiration of the time periods set forth in Sections 2-2-105(1), 2-2-106(2), 2-2-106(3), or 2-2-108(2) of this Ordinance, Staff may meet informally with an applicant to discuss an application, including any proposed Mitigation Plan. The results of such meetings shall be documented by a summary memo prepared by Staff and included in the application file. An applicant may also submit a memo documenting the meeting, which becomes part of the application file. If an application submitted pursuant to Section 2-2-104 or a Mitigation Plan submitted pursuant to Section 2-2-108(2) of this Ordinance is amended during this informal process, the amended application shall be reviewed by an individual on Staff who was not involved in the informal process to determine whether the amendments are so substantial that they constitute a new application. If it is determined that the amended application constitutes a new application, that application must be reviewed in its entirety pursuant to Sections 2-2-105 and 2-2-106 of this Ordinance. A new application fee must be submitted. A determination that an application amendment is so substantial as to constitute a new application may be appealed to the Engineer pursuant to Section 2-2-109 of this Ordinance.

2. Staff shall analyze an application determined to be adequate to process pursuant to Section 2-2-105 of this Ordinance within 180 days of the determination of adequacy using tools or techniques that may include:

a. independent resources compiled by Staff (including, but not limited to, Water Resources Surveys and field notes, aerial photographs, water rights decrees, stream gauging records, well logs, and water rights records);

b. water use records (water measurement, ranch logs, etc.) submitted by the applicant;

c. field inspection by Staff;

d. hydrologic or geohydrologic evaluation completed by Staff, provided that all model results, if any, shall be documented.

3. All information relied on by Staff in analyzing an application pursuant to this Section shall be documented in the application file.

4. Staff, using information from the application as well as their own compilation of independent resources and analysis, shall draft a recommended decision with findings of fact and conclusions of law determining:

a. whether the proposed Appropriation Right or Change in Use authorization will cause adverse effect to any Appropriator; and

b. whether and, if so, what amount of Mitigation is required before the proposed Appropriation Right or Change in Use authorization may be issued.

5. If the recommended decision is to grant the application, a summary of the application and the recommended decision shall be publicly noticed by the Office of the Engineer once via a legal notice in a local newspaper of general circulation and posted by the Office of the Engineer on the Board's website for a period not less than 45 days from the date the recommendation is issued. A summary of the application and the recommended decision shall also be distributed electronically to individuals or entities who have registered with the Board to receive electronic notice. If no objections are filed within 45 days of the initial Publication of the recommended decision by the Office of the Engineer, or if all filed objections are unconditionally withdrawn prior to being ruled upon, the application shall be granted by the Engineer or Designee within 10 days after expiration of the time for filing objections or after the unconditional withdrawal of the last objection, whichever date is later.

6. If the recommended decision is to deny the application, the applicant may withdraw the application within 10 days of the issuance of the recommended decision or appeal the recommended decision to the Engineer pursuant to Section 2-2-109 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. Failure to withdraw the application or file an appeal within the applicable timeframes shall result in the application being deemed denied on the day after the expiration of the time to appeal.

7. If the recommended decision is to grant the application with conditions other than Mitigation, the application shall be noticed to the public and processed pursuant to the procedures set forth in Sections 2-2-107(5) and 2-2-110 of this Ordinance unless the applicant withdraws the application within 30 days of the issuance of the recommended decision or appeals the recommended decision to the Engineer pursuant to Section 2-2-109 of this Ordinance. The application filing fee shall not be refunded upon withdrawal.

8. Amendments to applications are not allowed after the issuance of a recommended decision on that application, except as provided in Section 2-2-108(2) of this Ordinance.

2-2-108. Process if Mitigation Required.

1. If Staff analysis of an application concludes that Mitigation is necessary to approve an application, a recommended decision shall be issued to that effect. Upon issuance of a recommended decision finding that Mitigation is required, the applicant may:

a. withdraw the application (with no refund of the application filing fee);

b. appeal the recommended decision to the Engineer pursuant to Section 2-2-109 of this Ordinance; or

c. prepare a Mitigation Plan.

2. If the applicant chooses to prepare a Mitigation Plan, the running of the time set forth in Section 2-2-107(2) of this Ordinance for processing that application is suspended until a timely Mitigation Plan is received from the applicant. The Mitigation Plan must be submitted within 180 days of issuance of the recommended decision requiring Mitigation, or of the decision of the Engineer or Designee as set forth in Section 2-2-109(10) of this Ordinance, whichever date is later, and must include either or both of:

a. an application for a Change in Use authorization for another water right so as to provide for the required Mitigation; and/or

b. amendments describing the source, volume, flow rate, point of diversion, place of use, period of use, and place of storage of mitigation water that comes from other than a change authorization.

3. The running of the time set forth in Section 2-2-107(2) of this Ordinance for analyzing the application and issuing a recommended decision resumes upon the timely receipt by the Office of the Engineer of the material(s) required by subsection (2) of this Section.

4. If a Mitigation Plan is timely submitted by an applicant following a decision of the Engineer or Designee as set forth in Section 2-2-109(10) of this Ordinance, Staff shall issue a new recommended decision concerning the application within 180 days of the timely submission of the Mitigation Plan.

5. If the recommended decision is to grant the application conditioned on the Mitigation Plan submitted by the applicant pursuant to subsection (2) of this Section, the application shall be noticed to the public and processed pursuant to the procedures set forth in Sections 2-2-107(5) and 2-2-110 of this Ordinance.

6. If the recommended decision is to deny the application, the applicant may withdraw the application within 10 days of the issuance of the recommended decision or appeal the recommended decision to the Engineer pursuant to Section 2-2-109 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. Failure to withdraw the application or file an appeal within the applicable timeframes shall result in the application being deemed denied on the day after the expiration of the time to appeal.

7. If the Mitigation Plan is not submitted within 180 days of issuance of the recommended decision requiring Mitigation the application shall be deemed denied.

2-2-109. Appeal to Engineer from Recommended Decision.

1. If a recommended decision issued pursuant to Sections 2-2-107 or 2-2-108 of this Ordinance is to deny an application, or grant it with a requirement of Mitigation or other conditions, the applicant may appeal to the Engineer by filing a notice of appeal within 30 days of issuance of the recommended decision. An applicant may elect to have the appeal decided on the record, after submission of additional evidence and argument, or after hearing. If the applicant elects to have a hearing, that request must be made at the same time as the filing of the notice of appeal or the right to a hearing is waived. The notice of appeal must specify those parts of the recommended decision claimed to be in error.

2. Within 60 days from the filing of the notice of appeal, or any extended period of time, not to exceed 60 days, granted by the Engineer or Designee, the applicant may submit additional factual evidence and legal argument in support of the application. Staff who issued the recommended decision shall have 45 days from the applicant's submission to revise, amend, or affirm the recommended decision in a second recommended decision that explains in writing the rationale for the second recommended decision.

3. If the recommended decision or second recommended decision is to deny an application and no notice of appeal is filed pursuant to this Section, the application shall be deemed denied the day after expiration of the time for filing a notice of appeal.

4. The applicant bears the burden of demonstrating to the Engineer or Designee by a preponderance of the evidence, whether a hearing is held or not, that the recommended decision or second recommended decision is in error.

5. If the applicant requests a hearing before the Engineer or Designee, a hearing shall be held no later than the latest of the following:

a. 90 days after the filing of the notice of appeal; or

b. 30 days after the issuance of a second recommended decision pursuant to subsection (2) of this Section, whichever is later.

6. The hearing shall be recorded electronically and an official record maintained. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

7. A decision by the Engineer or Designee to reverse, modify, or affirm the recommended decision or the second recommended decision shall be made in writing within 60 days after the later of:

a. the filing of a notice of appeal pursuant to subsection (1) of this Section;

b. the submission of additional evidence or legal argument pursuant to subsection (2) of this Section;

c. issuance of Staff's second recommended decision; or

d. the completion of the hearing.

8. If the Engineer or Designee reverses the recommended decision or the second recommended decision, and determines that the application should be granted, the application shall be publicly noticed to the public and processed pursuant to the provisions of Section 2-2-107(5) and Section 2-2-110 of this Ordinance.

9. If the Engineer or Designee affirms the recommended decision or the second recommended decision, resulting in the denial of an application, the applicant may either accept that decision by withdrawing the application or taking no further action, or may appeal that decision to the Board pursuant to Section 2-2-111 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. If no timely notice of appeal is filed, the application shall be deemed denied on the day after the expiration of the time to file the notice of appeal.

10. If the Engineer or Designee affirms the recommended decision or the second recommended decision, resulting in the granting of an application with a requirement of conditions other than Mitigation, the applicant may withdraw the application; file with the Office of the Engineer written acceptance of the conditions within 30 days of the Engineer's or Designee's decision, in which case the application will be noticed to the public and processed pursuant to the provisions of Sections 2-2-107(5) and 2-2-110 of this Ordinance; or appeal the decision to the Board pursuant to Section 2-2-111 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. Failure to withdraw the application, file written acceptance of the condition, or file an appeal within the applicable timeframes shall result in the application being deemed denied on the day after the expiration of the time to appeal.

11. If an applicant has appealed to the Engineer a Staff determination that Mitigation is necessary pursuant to Section 2-2-108(1)(b) of this Ordinance, and the Engineer or Designee affirms the recommended decision resulting in a determination that Mitigation is required before the application may be granted, the applicant may withdraw the application; appeal the decision to the Board pursuant to Section 2-2-111 of this Ordinance; or prepare a Mitigation

Plan pursuant to Section 2-2-108(2) of this Ordinance. The application filing fee shall not be refunded upon withdrawal. Failure to withdraw the application, file a Mitigation Plan, or file an appeal within the applicable timeframes shall result in the application being deemed denied on the day after the expiration of the time to file a Mitigation Plan.

12. If the Engineer or Designee affirms a recommended decision or second recommended decision that found a Mitigation Plan inadequate to justify the issuance of the proposed Appropriation Right or Change in Use authorization, the applicant may either accept that decision by withdrawing the application or taking no further action, or may appeal that decision to the Board pursuant to Section 2-2-111 of this Ordinance. The application filing fee shall not be refunded upon withdrawal. If no timely notice of appeal is filed, the application shall be deemed denied on the day after the expiration of the time to file the notice of appeal.

13. Any applicant wishing to appeal a decision of the Engineer or Designee pursuant to this Section must file a notice of appeal with the Board. Any such notice of appeal must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

2-2-110. Notice and Hearing on Recommended Decision to Grant.

1. Any Person alleging that they will suffer adverse effect from the grant of an application for proposed Appropriation Right or Change in Use authorization may file an objection to a recommended decision to grant an application. To be valid, an objection must describe the alleged adverse effect on the objector's water right.

2. An objector or an applicant may elect to have any valid objection decided on the record or after hearing. If the objector elects to have a hearing, that request must be made at the same time as the filing of the objection or the objector's right to a hearing is waived. The applicant must invoke the right to a hearing within 10 days of receiving notice of the objection or the applicant's right to a hearing is waived.

3. Discovery prior to hearing will be as provided by the Engineer or Designee, and may commence following the receipt of a valid objection.

4. If, prior to the hearing, valid objections are withdrawn pursuant to an agreement between or among the applicant and objector(s) setting forth various conditions on the application, the Engineer or Designee shall grant the application subject to those conditions necessary to satisfy the criteria set forth in Section 2-2-102(1) of this Ordinance, but the Engineer or Designee has the discretion to accept or reject other conditions of the agreement between or among the applicant and objector(s).

5. The Engineer or Designee, after issuance of notice of hearing, may not communicate with any party to that case or any party's representative(s) in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate.

6. The hearing shall be recorded electronically and an official record maintained.

7. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

8. The burden of proof is on the applicant to prove the applicable criteria of Section 2-2-102(1) of this Ordinance by a preponderance of evidence.

9. A written decision by the Engineer or Designee shall be rendered within 60 days of the hearing, disseminated to the parties, and posted by the Office of the Engineer on the Board's website within 10 days of its issuance. If the individual who conducted the hearing becomes unavailable to the Office of the Engineer, a decision may be prepared by an individual who has read the record only if the demeanor of witnesses is considered immaterial by all parties to the case. If any party considers the demeanor of any witness to be material to the resolution of the appeal, a new hearing must be held.

10. Any applicant or objector dissatisfied with the final decision of the Engineer or Designee may appeal to the Board (and become an appellant) and obtain review of the Engineer's or

Designee's decision. A notice of appeal to the Board must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

2-2-111. Appeal to the Board.

1. Any question not raised before the Engineer or Designee may not be raised in the appeal to the Board unless it is shown to the satisfaction of the Board that there was good cause for failure to raise the question before the Engineer or Designee.

2. Appeal to the Board of decisions of the Engineer or Designee shall be confined to the record. If, before the date set for hearing the appeal, application is made to the Board for leave to present additional evidence and it is shown to the satisfaction of the Board that the additional evidence is material and that there were good reasons for failing to present it in the proceeding before the Engineer or Designee, the Board may order that the additional evidence be taken before the Engineer or Designee upon conditions determined by the Board, including the deadline for submission of additional evidence to the Engineer or Designee and for the conclusion of the Engineer's or Designee's review of any such additional evidence. The Engineer or Designee may modify the findings and decision by reason of the additional evidence or may affirm the prior decision and shall file a modified decision or notice of affirming the decision with the Board pursuant to a reasonable deadline set by the Board.

3. If the appellant requests an oral argument, the Board must hold oral argument on the appeal. If the appellant does not request an oral argument, the Board may, in its discretion, order oral argument or may resolve the appeal without one.

4. Review by the Board:

a. the review by the Board must be confined to the record. In cases of alleged irregularities in procedure before the Engineer or Designee not shown in the record, proof of the irregularities may be taken by the Board. The Board, upon request, shall hear oral argument and receive written briefs.

b. the Board may not substitute its judgment for that of the Engineer or Designee as to the weight of the evidence on questions of fact.

c. the Board may affirm the decision of the Engineer or Designee or remand the case for further proceedings.

d. the Board may reverse or modify the decision if substantial rights of an appellant have been prejudiced because:

i. the Engineer's or Designee's findings, inferences, conclusions, or decisions are:

(1) in violation of constitutional or statutory provisions;
(2) in excess of the authority of the Engineer or Designee;
(3) made upon unlawful procedure;
(4) affected by other error of law;
(5) clearly erroneous in view of the record as a whole;
(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

ii. findings of fact, upon issues essential to the decision, were not made although requested.

2-2-112. Appeal to Court of Competent Jurisdiction. Pursuant to Article IV.I.6 of the Compact, an aggrieved party may obtain review of a final decision of the Board by filing a petition for judicial review with a Court of Competent Jurisdiction within 30 days of the issuance of the final Board decision. In considering the petition, the Board's legal conclusions shall be reviewed for correctness and its factual findings for abuse of discretion. In the event that a court determines that it lacks subject matter or personal jurisdiction to rule on a petition for judicial review of a Board decision, the party filing the petition shall be entitled to petition for judicial review from any other Court of Competent Jurisdiction within thirty days from the date of a final court order finding lack of jurisdiction.

2-2-113. Completion.

1. Whenever an Appropriation Right or Change in Use authorization is issued under this Chapter, the Engineer or Designee shall specify in writing as part of the Appropriation Right or Change in Use authorization issued, or in any authorized extension of time provided pursuant

to subsection (2) of this Section, the time limits for commencement of the appropriation Works, completion of construction, and actual application of water to the proposed beneficial use. In fixing those time limits, the Engineer or Designee shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. The Engineer or Designee shall issue the Appropriation Right or Change in Use authorization, or the authorized extension of time, subject to the terms, conditions, restrictions and limitations the Engineer or Designee considers necessary to ensure that work on the Appropriation is commenced, conducted, and completed and that the water is actually applied in a timely manner to the beneficial use specified in the Appropriation Right or Change in Use authorization.

2. The Engineer or Designee, for good cause shown, may extend the time limits specified in the Appropriation Right or Change in Use authorization for commencement of the appropriation Works, completion of construction, and actual application of water to the proposed beneficial use. If commencement of the appropriation Works, completion of construction, or actual application of water to the proposed beneficial use is not completed within the time limit set forth in the Appropriation Right or Change in Use authorization, or by any extension granted pursuant to this subsection, the Appropriation Right or Change in Use authorization is void upon lapse of the time limit.

3. Any owner of an Appropriation Right or Change in Use authorization who disagrees with the time limit specified by the Engineer or Designee pursuant to subsections (1) and (2) of this Section may appeal the Engineer's decision to the Board pursuant to Section 2-2-111 of this Ordinance. A notice of appeal must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing.

2-2-114. Compliance with Completion Deadline. Upon actual application of water to the proposed beneficial use within the time allowed by the Engineer or Designee pursuant to Section 2-2-113 of this Ordinance, the owner of the Appropriation Right or Change in Use authorization shall notify the Office of the Engineer that the Appropriation has been completed. The notification must contain a certified statement by an individual with experience in the design, construction, or operation of appropriation Works describing how the Appropriation was completed. The Office of the Engineer shall review the certified statement and may then inspect the Appropriation, and if it determines that the Appropriation has been completed in substantial accordance with the Appropriation Right or Change in Use authorization, it shall issue the owner of the Appropriation Right or Change in Use authorization a Flathead Reservation Appropriation Right Document. The original of the document shall be sent to the owner of the Appropriation Right or Change in Use authorization, and a duplicate shall be kept in the Office of the Engineer.

2-2-115 Redundant and Substitute Wells.

1. An Appropriator may change an Appropriation Right or Existing Use without first applying for a Change in Use authorization pursuant to Sections 2-2-101 et seq. of this Ordinance for the purpose of constructing a Substitute Well if:

a. the rate and volume of the appropriation from the Substitute Well are equal to or less than that of the Well being replaced;

b. the water from the Substitute Well is appropriated from the same Groundwater source as the water appropriated from the Well being replaced; and

c. a timely, correct and complete Notice of Substitute Well is submitted to the Engineer as provided in subsection 2 of this Section.

2. Review.

a. Within 60 days after a Substitute Well is completed and delivering water, the Appropriator shall file a Notice of Substitute Well with the Office of the Engineer on a form provided by the Board. Upon receipt of the Notice, the Office of the Engineer shall date stamp it.

b. The Engineer or Designee shall review the Notice of Substitute Well within 90 days of the date stamped on it pursuant to subsection (2)(a) of this Section, and shall issue a Change in Use authorization if all of the criteria identified in subsection (1) of this Section have been met and the Notice of Substitute Well is correct and complete.

c. The Engineer or Designee may not issue a Change in Use authorization until a correct and complete Notice of Substitute Well has been filed with the Office of the Engineer. The Office of the Engineer shall return to the Appropriator a Notice that is determined by Staff to be defective, along with a description of defects in the Notice. The Appropriator shall refile a corrected and completed Notice of Substitute Well within 30 days of notification of defects or within a further time as the Engineer or Designee may allow, not to exceed 180 days. If the Appropriator does not refile within that timeframe, the Appropriation Right will be deemed denied and the Appropriator must then comply with the provisions of subsection (d) of this Section.

d. If a Notice of Substitute Well is not completed within the time allowed, the Appropriator shall:

i. cease appropriation of water from the Substitute Well pending approval by the Engineer or Designee; and

ii. submit an application for a Change in Use authorization pursuant to Section 2-2-104 of this Ordinance; or

iii. comply with the well abandonment procedures, standards and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law.

3. Wells that have been determined to be abandoned pursuant to Sections 2-1-111 and 2-1-112 of this Ordinance are not eligible to be replaced by Substitute Wells under this Section.

4. For each well that is replaced under subsection (1) of this Section, the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law.

5. An Appropriator may change an Appropriation Right or Existing Use without first applying for a Change in Use authorization pursuant to Section 2-2-101, et seq. of this Ordinance for the purpose of constructing a Redundant Well in a Public Water Supply System if the Redundant Well:

a. withdraws water from the same Groundwater source as the original well; and

b. is required by a State, federal, or Tribal agency.

6. The priority date of the Redundant Well is the same as the priority date of the original well. Only one well may be used at one time.

7. Within 60 days of completion of a Redundant Well, the Appropriator shall file a Notice of Construction of Redundant Well with the Office of the Engineer on a form provided by the Board. The Engineer or Designee shall review and process the Notice pursuant to the procedures set forth in subsection (2) of this Section.

8. If a Notice of Construction of Redundant Well is not completed within the time allowed, the Appropriator shall:

a. cease appropriation of water from the Redundant Well pending approval by the Engineer or Designee; and

b. submit an application for a Change in Use authorization pursuant to Section 2-2-104 of this Ordinance; or

c. comply with the well abandonment procedures, standards and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law.

9. Any Appropriator aggrieved by a determination that a corrected Notice required by subsection (2) or (7) of this Section, as applicable, is defective may appeal that determination to the Board by filing a notice of appeal to the Board within 30 days of the rejection of the corrected Notice. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing.

10. Any appeal to the Board filed pursuant to subsection (9) of this Section shall be conducted pursuant to the provisions of Section 3-1-104 of this Ordinance. If such an appeal is filed, the Engineer shall be the appellee.

2-2-116. Appropriation Rights for Stock Water Allowances.

1. Appropriation Rights for Stock Water Allowances include Stock Water Well Allowances, Stock Water Pit Allowances, and Stock Water Tank Served by Surface Water Allowances.

2. A Stock Water Well Allowance may be sourced from either Wells or Developed Springs.

3. A Stock Water Pit Allowance may be sourced from Groundwater seepage or a non-perennial stream.

4. A Stock Water Tank Served by Surface Water Allowance may be sourced from a perennial or non-perennial stream.

5. Before appropriating water for a Stock Water Well, approval from the Engineer is required. The Engineer may approve a Stock Water Well Allowance if:

a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;

b. the maximum flow rate is 35 gallons per minute or less;

c. the maximum annual diverted volume is 2.4 acre-feet or less;

d. the means of diversion is a single Well or Developed Spring;

e. the well is not physically connected to a Home or Business;

f. the means of diversion includes Well Shaft Casing; and

g. Stock Water use associated with the Appropriation is dispensed using Stock Tanks.

6. Before appropriating water for a Stock Water Pit Allowance, approval from the Engineer is required. The Engineer can approve a Stock Water Pit allowance if:

a. the capacity of the Stock Water Pit is 5 acre feet or less;

b. the maximum annual appropriated volume is 10 acre feet or less;

c. the Stock Water Pit Allowance is sourced from Groundwater seepage, a non-perennial stream, or both, provided that a ditch or pipeline is not used;

d. the Stock Water Pit Allowance is constructed on and accessible to a parcel of land 40 acres or larger and owned or under control of the applicant; and

e. the construction of the means of diversion complies with Tribal Ordinance 87(A) (Aquatic Lands Conservation Ordinance).

7. Before appropriating water for a Stock Water Tank Served by Surface Water Allowance, approval from the Engineer is required. The Engineer can approve a Stock Water Tank Served by Surface Water Allowance if:

a. the maximum flow rate is 10 gallons per minute or less;

b. the combined maximum annual diverted volume is 2.4 acre-feet or less;

c. the means of conveyance is a fully contained pipe or hose. Open ditch conveyance is not allowed;

d. the construction of the means of diversion complies with Tribal Ordinance 87(A) (Aquatic Lands Conservation Ordinance); and

e. Stock Water associated with the appropriation is dispensed using one or more Stock Tanks.

8. An applicant must file a completed Application for a Stock Water Allowance with the Office of the Engineer and obtain approval from the Engineer before developing and appropriating water for Stock Water use pursuant to this Section. A complete application shall also include:

a. proof that the applicant has the possessory interest or the written consent of the Person(s) with possessory interest in the property where the point of diversion is located and where the water is to be put to beneficial use, and property rights in the diversion Works; and

b. a site-map that shows, in addition to the requirements of Section 1-1-110(12) of this Ordinance, the location of all proposed Stock Water Allowance development(s) including latitude and longitude in decimal degrees. The map must include the entire property boundaries where the Stock Water Allowance development is proposed, or a minimum radius of 500 feet from any proposed Stock Water Allowance development, whichever is greater, and include any of the following that are in existence or are proposed by the applicant:

i. well(s), Pits and Stock Tanks including purpose of each;

ii. buildings on the site, including identification of Well connections;

iii. property lines and ownerships; and

iv. means of conveyance, water right points of diversions, and surface water features.

9. Upon receipt of a completed application form complying with subsection (8) of this Section, the Office of the Engineer shall date stamp the application form.

10. The Engineer or Designee shall review the application within 30 days of the date stamped on the application pursuant to subsection (9) of this Section, and within that timeframe may either approve the application or return a defective application to the applicant with a written explanation of the defects. If a corrected application is submitted within 30 days of its return by the Office of the Engineer, no new filing fee shall be required. Upon receiving a corrected application, which shall be date stamped by the Office of the Engineer upon receipt, the Engineer or Designee has 30 days from the date stamped on the corrected application pursuant to this subsection (10) to approve or deny the application.

11. If the Engineer or Designee does not approve or return an application within 30 days of the date stamped on the application pursuant to subsection (9) of this Section, the application shall be deemed approved. If the Engineer or Designee does not approve or deny a corrected application within 30 days of the date stamped on the application pursuant to subsection (10) of this Section, the application shall be deemed approved.

12. Once an applicant meets the requirements of subsections (5) through (9) of this Section, as applicable, and an application is approved by the Engineer or Designee under subsection (10) or (11) of this Section, the Office of the Engineer shall issue an authorization to develop a Stock Water Allowance. The authorization to develop a Stock Water Allowance entitles an Appropriator to construct the authorized type of Stock Water Allowance within, but not to exceed, one year of the date of approval.

13. An Appropriation Right for a Stock Water Allowance becomes valid and final when, within 120 days of completing the diversion Works and putting the water to beneficial use, an Appropriator files a Stock Water Allowance completion form accurately and completely. The completion form for a Stock Water Well Allowance must include a copy of the companion Well Log Report(s), and must identify the as-built attributes of any Well, Pit or Stock Tank constructed. If the as-built attributes are less than or equal to the size of the Allowance for which the applicant originally applied, a Certificate of Stock Water Allowance shall be issued for the as-built attributes. No Certificate of Stock Water Allowance may be issued if the as-built system exceeds the volumes or flow rates set forth in subsections (5), (6) or (7) of this Section, as applicable.

14. If an Appropriation Right for a Stock Water Allowance is revoked by the Board pursuant to the provisions of Section 3-1-112(3) of this Ordinance, or is determined to be abandoned pursuant to the provisions of Sections 2-1-111 and 2-1-112 of this Ordinance, or is voluntarily abandoned, the Appropriator shall, within 180 days of the revocation or voluntary abandonment, fill in and rehabilitate any Pits, Pit-dams, Constructed Ponds, or Reservoirs associated with the revoked or abandoned Appropriation Right for a Stock Water Allowance, and shall, within 180 days of the revocation or voluntary abandonment, seal any tanks or supply lines associated with the revoked or abandoned Appropriation Right for a Stock Water Allowance.

2-2-117. Appropriation Rights for Domestic Allowances for Homes and Businesses; process for application, review, and issuance.

1. Appropriation Rights for Domestic Allowances include Individual Domestic Allowances, Shared Domestic Allowances and Development Domestic Allowances. An Individual Domestic Allowance may be used only to serve an individual Home or Business. A Shared Domestic Allowance may be used only to serve no less than two and no more than three Homes and/or Businesses. A Development Domestic Allowance may be used only to serve a Development.

2. A Domestic Allowance may be sourced from either Wells or Developed Springs.

3. A Domestic Allowance may not be used to fill or maintain Pits, Pit-Dams, Constructed Ponds, or Reservoirs.

4. Before appropriating water for Domestic Use for an Individual Domestic Allowance, approval from the Engineer is required. The Engineer may approve an Individual Domestic Allowance if:

a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;

b. the maximum flow rate is 35 gallons per minute or less;

c. the maximum annual diverted volume is 2.4 acre-feet or less;

d. the means of diversion is a single Well or Developed Spring;

e. the Well is physically connected to and serves one and only one Home or Business;

f. the means of diversion includes Well Shaft Casing;

g. Stock Water use associated with the allowance is dispensed using Stock Tanks; and
h. the amount of land to be irrigated by the allowance is 0.7 acres or less.

5. Before appropriating water for a Shared Domestic Allowance, approval from the Engineer is required. The Engineer may approve a Shared Domestic Allowance if:
a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;
b. the maximum flow rate is 35 gallons per minute or less;
c. the maximum annual diverted volume is 2.4 acre-feet or less;
d. the means of diversion is a single Well or Developed Spring;
e. the Well is physically connected to not less than two and not more than three Homes and/or Businesses that are not a Development;
f. the means of diversion includes Well Shaft Casing;
g. Stock Water use associated with the allowance is dispensed using Stock Tanks;
h. if the Well is connected to two homes and/or businesses, the amount of land to be irrigated with the allowances is 0.5 acres or less. If the well is connected to three Homes and/or Businesses, the amount of land to be irrigated by the allowance is 0.75 acres or less; and
i. the application includes a copy of the Shared Well Agreement signed by all parties.

6. Before appropriating water for a Development Domestic Allowance, approval from the Engineer is required. The Engineer may approve a Development Domestic Allowance if:
a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;
b. the maximum flow rate from each Well or Developed Spring is 35 gallons per minute or less;
c. the combined maximum annual diverted volume from all wells and Developed Springs is 10 acre-feet or less;
d. Measurement devices approved by the Engineer and capable of recording cumulative volumes are installed on each Well or Developed Spring;
e. the means of diversion is one or more Wells and/or Developed Springs not to exceed one Well or Developed Spring per Home or Business within the Development;
f. the means of diversion includes Well Shaft Casing;
g. the allowance is physically connected to multiple Homes and/or Businesses that together constitute a Development;
h. Stock Water use associated with the allowance is dispensed using Stock Tanks;
i. the amount of land to be irrigated with the allowances is limited to 0.25 acres or less for each Home or Business within the Development;
j. the application includes a copy of any Shared Well Agreement(s) signed by all parties, if applicable;
k. the water supply requirements for all Homes and Businesses within the Development are satisfied by the allowance; and
l. the applicant includes a copy of the development plan, plat, or equivalent as required by the associated county government.

7. The owner(s) or operator(s) of a Development Domestic Allowance must submit a Development Domestic Allowance Water Measurement Report by March 31st of the year following the year covered by the report.

8. An applicant must file a completed Application for a Domestic Allowance and obtain approval from the Engineer before drilling any Well(s) or developing any spring(s) and putting water to use pursuant to this Section. A completed application shall also include:
a. proof that the applicant has a possessory interest or the written consent of the Person(s) with possessory interest in the property where the point of diversion is located and where the water is to be put to beneficial use, and property rights in the diversion Works; and
b. a site-map that shows, in addition to the requirements of Section 1-1-110(12) of this Ordinance, the location of all proposed Wells and Developed Springs including latitude and longitude in decimal degrees. The map must include the entire property boundaries where the Well associated with the Domestic Allowance is proposed, or a minimum of 500 feet in radius around the proposed Well(s) or Developed Spring(s), whichever is greater, and include any existing or proposed by the applicant:
i. Well(s) and Stock Tanks, including purpose of each well;
ii. sewage facilities including septic tanks and drainfields;

iii. buildings on the site, including identification of Well connections;
iv. property lines and ownerships;
v. irrigated acres per lot or unit Well(s); and
vi. means of conveyance, water right points of diversions, and surface water features.

9. Upon receipt of a completed application form complying with subsection (8) of this Section, the Office of the Engineer shall date stamp the application form.

10. The Engineer or Designee shall review the application within 30 days of the date stamped on the application pursuant to subsection (9) of this Section, and within that timeframe may either approve the application or return a defective application to the applicant, together with a written explanation of the defects. If a corrected application is submitted within 30 days of its return by the Office of the Engineer, no new filing fee shall be required. Upon receiving a corrected application, which shall be date stamped by the Office of the Engineer upon receipt, the Engineer or Designee has 30 days from the date stamped on the corrected application pursuant to this subsection (10) to approve or deny the application.

11. If the Engineer or Designee does not approve or return an application within 30 days of the date stamped on the application pursuant to subsection (9) of this Section, the application shall be deemed approved. If the Engineer or Designee does not approve or deny a corrected application within 30 days of the date stamped on it pursuant to subsection (10) of this Section, the application shall be deemed approved.

12. Once an applicant meets the requirements of subsections (4), (5), or (6) of this Section, as applicable, as well as the requirements of subsection (8) of this Section, and an application is approved by the Engineer or Designee under subsection (10) or (11) of this Section, the Office of the Engineer shall issue an authorization to develop a Domestic Allowance. The authorization to develop a Domestic Allowance entitles an Appropriator to construct the authorized type of Domestic Allowance within, but not to exceed, one year of the date of approval.

13. An Appropriation Right for a Domestic Allowance becomes valid and final when, within 120 days of completing the Well(s) or Developed Spring(s) and putting the water to beneficial use, an Appropriator files a Domestic Allowance completion form accurately and completely. The completion form must also include a copy of the companion Well Log Report(s), and must identify the as-build attributes of any Well or Stock Tank constructed. If the as-built attributes are less than or equal to the size of the allowance for which the applicant originally applied, a Certificate of Domestic Allowance shall be issued for the as-built attributes. No Certificate of Domestic Allowance may be issued if the as-built system exceeds the volumes or flow rates set forth in subsections (4), (5) or (6) of this Section, as applicable.

14. If an Appropriation Right for a Domestic Allowance is revoked by the Board pursuant to the provisions of Section 3-1-112(3) of this Ordinance, or is determined to be abandoned pursuant to the provisions of Sections 2-1-111 and 2-1-112 of this Ordinance, or is voluntarily abandoned, the Appropriator shall, within 180 days of the revocation or voluntary abandonment, follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law, for any Well associated with the revoked or abandoned Appropriation Right for a Domestic Allowance.

2-2-118. Process for development of new uses from Flathead System Compact Water.

1. Subject to the terms and conditions of the Compact, the Tribal Council or its delegate, or any Person with the written consent of the Tribal Council or its delegate, may apply to utilize Flathead System Compact Water for any beneficial use within the Reservation by submitting a correct and complete application to the Office of the Engineer.

2. A correct and complete application for a use of Flathead System Compact Water shall contain the following information:
a. the name of the applicant;
b. a description of the proposed purpose of use;
c. the point of diversion;
d. the means of diversion;
e. the place of use;
f. the flow rate, volume diverted, and volume consumed;
g. the means of conveyance;

h. the period of use;

i. the duration or term of the proposed use;

j. a project plan, including a proposed completion period and, if applicable, a list of water rights to be used in conjunction with or to be replaced by the proposed use of Flathead System Compact Water for which the application is being filed;

k. a map depicting all the features described in this subsection (2); and

l. if the applicant is not the Tribal Council or its delegate, written authorization from the Tribal Council or its delegate to submit the application.

3. Upon receipt of a completed application for the use of Flathead System Compact Water, the Office of the Engineer shall date stamp it.

4. Staff shall analyze the application for the use of Flathead System Compact Water within 180 days of the date stamped on the application pursuant to subsection (3) of this Section using the tools and techniques identified in Section 2-2-107(2) of this Ordinance to determine compliance with the criteria identified in Section 2-2-102(2)(b) through (f) of this Ordinance.

5. All information relied upon by Staff in analyzing an application pursuant to this Section shall be documented in the application file.

6. Staff, using information from the application as well as their own compilation of independent resources and analysis, shall draft a recommended decision with findings of fact and conclusions of law determining whether the application satisfies the criteria set forth in Section 2-2-102(2)(b) through (f) of this Ordinance.

7. If the recommended decision is to grant the application, a summary of the application and the recommended decision shall be publicly noticed by the Office of the Engineer once via legal notice in a newspaper of general circulation on the Reservation and shall be posted on the Board's website for a period of 45 days from the date the recommended decision is issued, during which time objections may be filed with the Engineer. If no objections are filed, or if all filed objections are withdrawn prior to being ruled upon, the application shall be granted by the Engineer within 10 days after expiration of the time for filing objections, or after the unconditional withdrawal of the last objection, whichever date is later.

8. If the recommended decision is to deny the application, the applicant may appeal the recommended decision to the Engineer pursuant to the provisions of Section 2-2-109 of this Ordinance.

9. If the recommended decision is to grant the application with conditions, the application shall be noticed to the public pursuant to the provisions of subsection (7) of this Section unless the applicant withdraws the application within 30 days of the issuance of the recommended decision or appeals the recommended decision to the Engineer pursuant to the provisions of Section 2-2-109 of this Ordinance. The application filing fee shall not be refunded upon withdrawal.

10. To be valid for processing, an objection to an application for the use of Flathead System Compact Water must assert and describe how the proposed development of Flathead System Compact Water fails to comply with one or more of the criteria set forth in Section 2-2-102(2)(b) through (f) of this Ordinance. Any such valid objection shall be resolved pursuant to the procedures set forth in Sections 2-2-110 through 2-2-112 of this Ordinance, provided however, that the burden of proof in the hearing before the Engineer or Designee shall be on the objector to prove by a preponderance of the evidence that the application fails to comply with one or more of the criteria set forth in Section 2-2-102(2)(b) through (f) of this Ordinance.

11. Unless an objection to the application is sustained, the application shall be granted within 10 days of expiration of the time to appeal the decision relating to any objection or after the exhaustion of the objector's last appeal, whichever date is later.

12. The priority date of any use of Flathead System Compact Water is the date of the Tribes' Flathead System Compact Water right as set forth in Article III.C.1.c of the Compact.

2-2-119. Appropriation Rights for Non-consumptive Geothermal Heating or Cooling Exchange Wells.

1. Appropriation Rights may be issued for non-consumptive geothermal heating or cooling exchange Wells with a maximum appropriation of 350 gallons a minute or less if all of the water extracted is returned without delay to the same source aquifer, if the distance between the extraction well and both the nearest existing well and any hydraulically connected surface

waters is more than twice the distance between the extraction well and the Injection Well, and if all Well construction complies with the requirements of Section 1-1-111 of this Ordinance. Before appropriating water for a use described in this subsection (1), approval of the Engineer is required.

2. An applicant must file a completed application form and obtain approval from the Engineer before drilling any Well(s) or developing any spring(s) and putting water to use pursuant to this Section. A completed application shall also include:

a. proof that the applicant has the possessory interest or the written consent of the Person(s) with possessory interest in the property where the point of diversion is located and where the water is to be put to beneficial use, and property rights in the diversion Works; and

b. a site-map showing the location of all proposed wells including latitude and longitude in decimal degrees. The map must also include the entire property boundaries where the Wells are proposed, or a minimum of 500 feet in radius around the proposed Well(s) or spring(s), whichever is greater, and include any of the following that exist or are proposed by the applicant:

i. well(s) including purpose of each well;

ii. sewage facilities including septic tanks and drainfields;

iii. buildings on the site, including identification of Well connections;

iv. property lines and ownerships;

v. irrigated acres per lot or unit well(s); and

vi. means of conveyance, water right points of diversions, and surface water features.

3. Upon receipt of a completed application form complying with subsection (2) of this Section, the Office of the Engineer shall date stamp the application form.

4. The Engineer or Designee shall review the application within 45 days of the date stamped on the application pursuant to subsection (3) of this Section, and within that timeframe may either approve the application or return a defective application to the applicant, together with a written explanation of the defects. If a corrected application is submitted within 30 days of its return by the Office of the Engineer, no new filing fee shall be required. Upon receiving a corrected application, which shall be date stamped by the Office of the Engineer upon receipt, the Engineer or Designee has 30 days from the date stamped on the corrected application pursuant to this subsection (4) to approve or deny the application.

5. If the Engineer or Designee does not approve or return an application within 45 days of the date stamped on the application pursuant to subsection (3) of this Section, the application shall be deemed approved. If the Engineer or Designee does not approve or deny a corrected application within 30 days of the date stamped on this application pursuant to subsection (4) of this Section, the application shall be deemed approved.

6. Once an applicant meets the requirements of subsection (1) of this Section and the application is approved pursuant to subsection (4) or (5) of this Section, as applicable, the Engineer shall issue an authorization to develop the Appropriation Right for a Heating/Cooling Exchange Well.

7. An Appropriation Right for a Heating/Cooling Exchange Well becomes valid and final when, within 120 days of completing the Well(s) or Developed Spring(s) and putting the water to beneficial use, an Appropriator files a Heating/Cooling Exchange completion form accurately and completely. The completion form must also include a copy of the companion Well Log Report(s) for the extraction Well and the Injection Well.

8. If an Appropriation Right for a Heating/Cooling Exchange Well is revoked by the Board pursuant to the provisions of Section 3-1-112(3) of this Ordinance, or is determined to be abandoned pursuant to the provisions of Sections 2-1-111 and 2-1-112 of this Ordinance, or is voluntarily abandoned, the Appropriator shall, within 180 days of the revocation or voluntary abandonment, follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law, for any Well associated with the revoked or abandoned Appropriation Right for a Heating/Cooling Exchange Well.

2-2-120. Temporary Emergency Appropriations.

1. A Temporary Emergency Appropriation may be made without prior approval from the Board, but the use must cease immediately when the water is no longer required to meet the emergency.

2. A Temporary Emergency Appropriation does not include the use of water for the ordinary operation and maintenance of any trade or business, including but not limited to agricultural production.

3. Within 60 days after the cessation of a Temporary Emergency Appropriation, the Appropriator shall notify the Board of the use to which the water was put, the dates of use, and the estimated amount of water used.

4. Except as set forth in subsection (5) of this Section, a Temporary Emergency Appropriation may not include the use of Enclosed Storage.

5. When the Temporary Emergency Appropriation is made by a local governmental fire agency organized under Title 7, chapter 33, MCA, or applicable Tribal law, and the Temporary Emergency Appropriation is used only for emergency fire protection, the Temporary Emergency Appropriation may include enclosed storage.

2-2-121. Short-term use of a portion of the Tribal Water Right for road construction or dust abatement. The Tribes, or a Person with the written consent of the Tribes, may use a portion of the Tribal Water Right for road construction or dust abatement purposes, without the prior approval of the Board, subject to the following provisions:

1. For uses of 20,000 gallons or less per day from a single source of supply, no notice is required;

2. For uses greater than 20,000 gallons per day and less than 60,000 gallons per day from a single source of supply, a notice must be posted at the site of the diversion or withdrawal for the entire period during which water is being diverted or withdrawn. The notice posted shall be clearly legible and visible and provide the following information:

a. source of water;
b. purpose of use;
c. starting and ending date of diversion;
d. place of use;
e. diversion flow rate;
f. maximum volume of water to be diverted or withdrawn per day; and
g. name and contact information for the user of the water and for the Board.

3. For uses greater than 60,000 gallons per day from a single source of supply, the Board must be notified at least 10 days but not more than 45 days in advance of the initial use of the water. Notice must be posted at the site of the diversion or withdrawal, as provided in subsection (2) of this Section. Notification to the Board must provide the following information:

a. source of water;
b. legal description of the point of diversion or withdrawal;
c. place of use;
d. map showing preceding three items;
e. purpose of use;
f. starting and ending date of use;
g. diversion flow rate;
h. maximum volume of water to be diverted or withdrawn per day; and
i. name and contact information for the user.

4. The diversion or withdrawal of water pursuant to this Section shall not adversely affect any legal use of water in existence as of the date of the diversion or withdrawal; and

5. If notified that the diversion or withdrawal of water pursuant to this Section is adversely affecting any legal use of water in existence as of the date of the diversion or withdrawal, the user will immediately cease diversion or withdrawal from that source of supply. To resume the diversion or withdrawal, the user may move the diversion or withdrawal to another source of supply, or may satisfy the Board and the holder(s) of the affected legal use(s) of water in existence as of the date of the diversion or withdrawal that use will not cause adverse effects.

2-2-122. Short-term use of an appropriation right that is not part of the Tribal Water Right for road construction or dust abatement.

1. An Appropriator may lease, for a term not to exceed 90 days, all or part of an Appropriation Right or Existing Use that is not part of the Tribal Water Right for road construction or dust abatement without the prior approval of the Board, subject to the requirements of this Section. The lease agreement must include the following information:

a. the name and address of the lessee;

b. the name of the owner of the Appropriation Right or Existing Use;

c. the number of the Appropriation Right or Existing Use;

d. the purpose of use of water for which the lease is being made;

e. the source of water to be appropriated;

f. the starting and ending date of the proposed use of water;

g. the proposed point of diversion;

h. the proposed place of use;

i. the diversion flow rate and volume of water to be used during the period of use; and

j. a description of how the prior use of water will be reduced to accommodate the temporary change of use of the Appropriation Right or Existing Use, including the number and location of acres to be removed from irrigation, if applicable.

2. A short-term lease of an Appropriation Right or Existing Use under this Section may not exceed 60,000 gallons a day or the amount of the Appropriation Right or Existing Use, whichever is less. Any combination of short-term leases cannot exceed 120,000 gallons a day for one project.

3. Except as provided in subsection (7) of this Section, the following information must be submitted to the Board at least 2 days prior to the use of water by a lessee under this Section:

a. a copy of the Publication notice or copies of the individual notice required under subsection (4) of this Section;

b. a copy of the lease agreement; and

c. for a combination of short-term leases greater than 60,000 gallons a day for one project, an analysis by the lessee of any potential adverse effects and a description of planned actions to mitigate any potential adverse effects to Appropriators in the area of the proposed point of diversion.

4. Except as provided in subsection (7) of this Section, the lessee of an Appropriation Right or Existing Use under this section shall, 30 days prior to the use of the water, publish a notice of the proposed use of water once in a newspaper of general circulation in the area of the diversion or mail individual notice to potentially affected Appropriators in the area of the proposed point of diversion. The published notice or the individual notice must contain the information listed in subsections (1)(a) through (1)(j) and (3)(c) of this Section.

5. Complaints regarding temporary use

a. an Appropriator, whether the water right is prior or subsequent in priority to the short-term lease acquired by a Person under this Section, who cannot satisfy in full the Appropriator's right during the time that the short-term lessee is diverting water, may make a complaint to the Engineer pursuant to Section 3-1-102 of this Ordinance and cause the short-term lessee's diversion to be discontinued.

b. the diversion is discontinued until the complaining Appropriator's water right is satisfied or until the lessee establishes to the Engineer that the discontinuance has had no effect on the complaining Appropriator's water right. Upon establishment that discontinuance has not had an effect, the Engineer shall enter an order allowing the diversion to continue.

6. This Section does not limit the remedies available to an Appropriator to enjoin or to seek damages from a Person appropriating water under this Section.

7. a. a consolidated city-county or a county or an incorporated city or town is not subject to the requirements of subsections (3)(a) and (4) of this Section when conducting dust abatement that was not scheduled or contracted for 30 days or more prior to the use of the water.

b. a consolidated city-county or a county or an incorporated city or town that does not publish notice as provided in subsection (4) of this Section shall post a copy of the lease agreement at the point of diversion at least 24 hours prior to and during the time that water is diverted.

2-2-123. Wetland Protective Appropriation Rights.

1. Pursuant to the provisions of Sections 2-2-101 et seq. of this Ordinance, a Wetland Protective Appropriation Right for a Natural Wetland or Restored Natural Wetland may be issued, subject to the following limitations:

a. except as authorized by Appropriation Rights issued pursuant to Section 1-1-107(1)(k) of this Ordinance, irrigation return flows may not be used as a source for an Appropriation Right issued pursuant to this Section.

b. No Wetland Protective Appropriation Right shall be issued for any Wetland using Pits, Pit-dams, or Constructed Ponds.

c. No Wetland Protective Appropriation Right shall be issued for any Wetland occurring solely as a result of seepage from irrigation reservoirs, canals, laterals or ditches.

d. No Wetland Protective Appropriation Right shall be used for any other purpose and shall not be changed to another purpose.

2. Wetlands eligible for Wetlands Protective Appropriation Rights are:

a. Those Wetlands identified on the map of Wetlands eligible for Wetlands Protective Appropriations Rights (available from the Office of the Engineer); or

b. Those Wetlands not identified on the Map if:

i. the proposed use is a Restored Natural Wetland;

ii. the applicant provides a site-specific Wetlands delineation, using any delineation method approved by the Engineer, that includes:

(1) the total number of acres and a detailed map showing the proposed boundary of the Wetland for which the Wetland Protective Appropriation Right is being applied; and

(2) an identification of the Wetlands delineation method used, along with supporting field data.

2-2-124. Wetland Quantified Appropriation Rights.

1. Pursuant to the provisions of Sections 2-2-101 et seq. of this Ordinance, an Appropriations Right or Change in Use authorization to divert, impound, or withdraw surface water or Groundwater for a Wetland purpose may be issued.

2. All Wetlands that utilize man-made diversions, impoundments, withdrawals, excavations, or other artificial means for the purposes of Appropriation for either all or a portion of a Wetland water supply in excess of a Natural Wetland water supply or Restored Natural Wetland water supply shall obtain, in advance of Appropriation, an Appropriation Right or Change in Use authorization for that Wetland purpose.

3. In addition to the information required by Sections 1-1-110 and 2-2-104 of this Ordinance, an application for an Appropriation Right or Change in Use authorization pursuant to this section shall include the following information:

a. A delineation of pre-project existing Wetlands and post-project Wetlands using a Wetland delineation method approved by the Engineer. The delineation shall describe the following pre-project and post-project Wetland attributes:

i. the outer Wetland boundary and area in acres;

ii. the boundaries of permanently inundated areas, depth in feet, and area in acres;

iii. the boundaries of seasonally inundated areas, period of inundation, depth in feet, and area in acres;

iv. the boundaries of permanently saturated areas and area in acres;

v. the boundaries of seasonally saturated areas, period of saturation, and area in acres; and

vi. Wetland vegetation boundaries and area in acres.

b. The location and description of the manmade diversions, impoundments; withdrawals, excavations, or other artificial means for the purposes of Appropriation;

c. The flow rate and volume of water to be appropriated in monthly time steps; however, the Office of the Engineer may require a more frequent quantification time step;

d. The consumptive volume for each Wetland attribute delineated pursuant to Section 2-2-124(a) of this Ordinance in monthly time steps; however, the Office of the Engineer may require a more frequent quantification time step;

e. non-consumed water, including flow rate and volume estimates, and a description of return flows and their eventual destination and timing; and

f. the volume of Natural Wetland water supply, if applicable, in monthly time steps.

2-2-125. Notice of Trust Status Conversion for Lands with Appurtenant Water Rights Arising Under State Law Acquired by the Tribes. As provided for by the Compact, Article III.H, the following process shall be used to notify the Water Management Board of the transfer of Tribally-owned fee land to trust status:

1. Starting upon the Effective Date of the Compact, the Tribes may file a Trust Transfer form with the Board for any lands acquired by the Tribes with appurtenant Water Rights Arising Under State Law that have been taken into trust by the United States on behalf of the Tribes.

2. A copy of the deed transferring the fee land to trust status shall be attached to the form.

2-2-126. Water Management Board Adjustment of Priority Date Pursuant to Compact. Upon submission of a Trust Transfer form by the Tribes, the priority date of any Water Rights Arising Under State Law appurtenant to land identified on the Trust Transfer form shall be adjusted by the Water Management Board to July 16, 1855. The Board shall cause the adjusted priority date to be entered into the Reservation water rights database identified in Section 1-1-108 of this Ordinance.

2-2-127. Tribal Utilization of Water Right with Adjusted Priority Date. Any water right whose priority date is adjusted pursuant to Section 2-2-126 of this Ordinance shall be subject to the following use conditions:

1. The water right must be used as historically used; or

2. Changes to the water right must be made pursuant to the provisions set for the in Article IV.B.4 of the Compact and Section 2-2-101 et seq. of this Law of Administration.

2-2-128. Public Water Supply Reporting Requirements

1. The following shall comply with the reporting requirements set forth in subsection (2) of this Section:

a. any new Public Water Supply System approved pursuant to this Ordinance;

b. any Public Water Supply System in existence prior to the effective date of this Ordinance whose authorized use is expanded pursuant to this Ordinance.

2. On an annual basis, any entity responsible for the operation of a Public Water Supply System identified in subsection (1) of this Section shall report to the Office of the Engineer the total volume by month of pumping or diversion of the Public Water Supply System.

CHAPTER III
ENFORCEMENT

3-1-101. Scope

1. The enforcement powers set forth in this Chapter apply to the resolution of disputes between Appropriators who are not served by the Flathead Indian Irrigation Project, or between any Appropriators who are not served by the FIIP and any water user(s) or holders of Existing Rights, if any, whose use of water is served by the FIIP. Disputes exclusively between or among users whose water is delivered by the FIIP shall remain subject to the oversight of the Project Operator and the Enforcement provisions of this Ordinance shall not apply. The powers and duties set forth in this Chapter, as they extend to uses of the Tribal Water Right within the FIIP, extend only to the resolution of disputes concerning the delivery of water to FIIP diversion facilities and shall not extend to the administration of that water in FIIP facilities or on lands served by the FIIP, which shall remain subject to the oversight of the Project Operator.

2. Nothing in this Chapter, or in the Ordinance, is intended to preclude a water user from working informally with other water users, any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, or the Engineer, to resolve disputes or real-time water operation issues without recourse to the provisions of this Chapter. A synopsis of all such resolutions between a water user and any Water Commissioner or the Engineer shall be reduced to writing, and dated, a copy of which shall be kept in the Office of the Engineer and available for public inspection. A synopsis of any such resolution between or among water users may be reduced to writing. Provided, however, that any water user not party to any such informal resolution who believes himself or herself to be injured by the informal resolution may seek redress by invoking the provisions of this Chapter, subject to the limitation concerning FIIP water use set forth in subsection (1) of this Section, to challenge the informal resolution.

3. Any of the timeframes set forth in Sections 3-1-102 through 3-1-107 of this Ordinance may be extended upon mutual agreement of the parties to any dispute.

3-1-102. Complaint to the Engineer Regarding Actions or Inactions Between Appropriators.

1. Subject to the limitation concerning FIIP water use set forth in Section 3-1-101(1) of this Ordinance, any Appropriator aggrieved by the action or inaction of any other Appropriator, or by any Person the Complainant believes is Wasting water to the detriment of a right to use water the Complainant possesses, may file a Complaint with the Engineer. Such Complaint must be submitted in writing and describe specifically the action or inaction being complained of and the justification for the Complaint.

2. Upon receipt of a Complaint, the Office of the Engineer shall date stamp it and return a copy to the Complainant along with a written statement indicating that informal resolution of the dispute between the Appropriators, or between an Appropriator and a Person accused of Wasting water, may provide a more timely and cost-effective remedy than having the Complaint adjudicated by the Engineer.

3. Within 3 days of the receipt of the Complaint, the Office of the Engineer shall serve a copy of it on the Appropriator or other Person whose action or inaction is being complained of (the "Respondent"), and shall post notice of the Complaint on the Board's website. The notice to the Respondent shall include a written statement indicating that informal resolution of the dispute between the Complainant and the Respondent may provide a more timely and cost-effective remedy than having the petition adjudicated by the Engineer.

3-1-103. Resolution of Complaint.

1. No later than 15 days after the provision of notice of the Complaint to the Respondent, pursuant to Section 3-1-102(3) of this Ordinance, the Engineer or Designee shall hold a hearing on the Complaint, provided, however that the Engineer or Designee may take an additional 10 days before holding the hearing to perform such independent investigation into the Complaint as the Engineer or Designee deems appropriate. At such time, both the Complainant and the Respondent shall explain their positions concerning the matter complained of. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

2. A decision by the Engineer or Designee on the Complaint shall be made in writing within 7 days after the completion of the hearing.

3. The decision of the Engineer or Designee may include an award of declaratory relief, and/or the imposition of conditions on the use or exercise of a water right. Such conditions may include, but are not limited to, instructions regarding the proper delivery of water, the installation of measuring devices, the construction of suitable ditches to carry the return waters from any ditch or lands to the main stream or proper waste way, or the mandate of structural changes to diversion structures.

4. Any Complainant or Respondent dissatisfied with the final decision of the Engineer or Designee may appeal to the Board (and become an Appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be received by the Board within 30 days of the issuance of the Engineer's or Designee's written decision. The decision of the Engineer or Designee shall not be stayed during the pendency of the appeal unless the Board expressly orders such a stay upon motion of the Complainant or Respondent.

3-1-104. Appeal to the Board.

1. Upon receipt of a notice of appeal pursuant to Section 3-1-103(4) of this Ordinance, or any other Section of this Ordinance that provides for appeal to the Board pursuant to the provisions of this Section, the Board, acting through the Office of the Engineer, shall date stamp the notice and return a copy to the Appellant. Within three days of receipt of the notice of appeal, the Board, acting through the Office of the Engineer, shall serve a copy of the notice of appeal on the other party to the dispute (who becomes the Appellee).

2. Either party to the appeal may elect to have oral argument prior to the resolution of the appeal. The Appellant must request oral argument at the time of the filing of the notice of appeal or the Appellant's right to oral argument is waived. The Appellee must request oral argument within 10 days of the Appellee's receipt of the notice of appeal pursuant to subsection (1) of this Section, or the Appellee's right to oral argument is waived. If either party to the appeal requests oral argument, such argument must be held within 60 days of the filing of the notice of appeal, or within 30 days of the receipt of evidence or argument pursuant to subsection (3) or (4) of this Section, whichever date is later.

3. Within 60 days from the filing of the notice of appeal, or any extended period of time, not to exceed 60 days, granted by the Board, the Appellant and Appellee may each submit additional factual evidence and legal argument concerning the appeal to the Board and shall serve copies of the same on the other party to the dispute.

4. Either party to the appeal shall have 60 days from the date of receipt of the evidence or argument served pursuant to subsection (3) of this Section, or any extended period of time granted by the Board, not to exceed 60 days, to respond in writing to the evidence and argument submitted by the other party to the dispute pursuant to subsection (3) of this Section.

5. If oral argument is held, the argument shall be recorded electronically and an official record maintained.

6. A decision by the Board on the appeal shall be made in writing within 60 days after the completion of oral argument or, if the right to oral argument is waived, within 60 days after the deadline for the submission of evidence and argument pursuant to subsections (3) and (4) of this Section, whichever is later. The written decision shall set forth the ruling of the Board along with a statement of the reasons therefor.

7. In ruling on the appeal, the Board may sustain the decision of the Engineer or Designee, may overturn that decision and set aside any relief ordered by the Engineer or Designee, or may remand the matter to the Engineer or Designee for such further proceedings as may be specified in the Board's written decision.

3-1-105. Petition to the Engineer by Any Appropriator Aggrieved by Actions or Inactions of a Water Commissioner.

1. Any Appropriator aggrieved by the action or inaction or written directive from any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, may petition the Engineer for relief (and become a Petitioner). Such petition must be submitted in writing and describe with particularity the action, inaction or directive giving rise to the petition and the justification for the petition.

2. Upon receipt of a petition, the Office of the Engineer shall date stamp it and return a copy to the Petitioner along with a written statement indicating that informal resolution of the dispute between the Petitioner and the Water Commissioner may provide a more timely and cost-effective remedy than having the petition adjudicated by the Engineer.

3. Within 3 days of the date stamped on the petition pursuant to subsection (2) of this Section, the Office of the Engineer shall serve a copy of it on the Water Commissioner whose action, inaction or written directive is being petitioned against, and shall post notice of the Petition on the Board's website.

3-1-106. Resolution of Petition.

1. A Petitioner may elect to have the Petition decided on the record after submission of additional evidence and argument, or after hearing. If a Petitioner elects to have a hearing, that request must be made at the same time as the filing of the Petition or the right to a hearing is waived.

2. The Water Commissioner may elect to have the Petition decided after a hearing. The request for a hearing must be made within 5 days of the Water Commissioner's receipt of notice of the Petition pursuant to Section 3-1-105(3) of this Ordinance or the Water Commissioner's right to a hearing is waived.

3. If either the Petitioner or the Water Commissioner elects to have the Petition resolved after a hearing, the Engineer or Designee shall hold a hearing on the Petition no later than 14 days after the filing of the Petition, or within 14 days of the expiration of the time for the submission of evidence or argument pursuant to subsection (5) of this Section, whichever date is later; provided, however that the Engineer or Designee may take an additional 10 days before holding the hearing to perform such independent investigation into the petition as the Engineer or Designee deems appropriate.

4. Within 5 days from the filing of the Petition, or any extended period of time, not to exceed 5 days, granted by the Engineer, the Petitioner and Commissioner may each submit additional factual evidence and legal argument concerning the Petition to the Engineer or Designee and shall serve copies of the same on the other party to the dispute.

5. Either party to the dispute shall have 5 days from the date of receipt of the evidence or argument served pursuant to subsection (4) of this Section, or any extended period of time granted by the Engineer or Designee, not to exceed 5 days, to respond in writing to the evidence and argument submitted by the other party to the dispute pursuant to subsection (4) of this Section.

6. The Petitioner shall bear the burden of proof before the Engineer or Designee.

7. The hearing shall be recorded electronically and an official record maintained. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

8. A decision by the Engineer or Designee on the Petition shall be made in writing within 7 days after the completion of the hearing or, if the right to a hearing is waived, within 7 days after the deadline for the submission of evidence and argument pursuant to subsections (4) and (5) of this Section, whichever is later. If the individual who conducted the hearing becomes unavailable to the Office of the Engineer, a decision may be prepared by an individual who has read the record only if the demeanor of witnesses is considered immaterial by all parties; if any party considers the demeanor of any witness to be material to the resolution of the petition, a new hearing must be held.

9. The decision of the Engineer or Designee may include an award of declaratory relief, and/or the imposition of conditions on the use or exercise of an Appropriation Right or Existing Use. Such conditions may include, but are not limited to, the installation of measuring devices, the construction of suitable ditches to carry the return waters from any ditch or lands to the main stream or proper waste way, or the mandate of structural changes to diversion structures.

10. Any Petitioner or Commissioner dissatisfied with the final decision of the Engineer or Designee may appeal to the Board (and become an Appellant) and obtain review of the Engineer's or Designee's decision. A notice of appeal to the Board must be received by the Board within 30 days of the issuance of the Engineer's or Designee's written decision.

3-1-107. Appeal to the Board from a Decision on a Petition. The process for appeal to the Board of the Engineer's or Designee's decision on a Petition shall be as set forth in Section 3-1-104 of this Ordinance.

3-1-108. Appeal from a Decision of the Board. The process for appeal from a decision of the Board issued pursuant to Section 3-1-104 of this Ordinance shall be as set forth in Section 2-2-112 of this Ordinance.

3-1-109. Emergency Enforcement Powers of the Engineer. In an Emergency, the Engineer, or any Staff who is so directed by the Engineer, or any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, shall have the authority to lock, remove, render inoperative, shut down, close, seal, cap, modify, or otherwise control methods of diversions and withdrawals, and obstructions to the flow of water, subject to expedited appeal to the Board by the affected Person, as provided in Section 3-1-110 of this Ordinance.

3-1-110. Additional Enforcement Powers of the Engineer.

1. The Engineer, or any Staff who is so directed by the Engineer, or any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, may enter upon lands on the Reservation with reasonable notice to the owner or occupant, to investigate and inspect methods of diversion, withdrawal, and other activities affecting water quantity, to install measuring devices at the expense of the water user on surface and Groundwater diversions for the purpose of enforcing and administering this Ordinance, to monitor water use, water quality, and diversion structures.

2. The Engineer, or any Staff who is so directed by the Engineer, or any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, may take action to prevent the Illegal use of water, including, but not limited to the temporary decommissioning of head gates or other diversion Works.

3. The Engineer may issue written notices of violation to Appropriators and to Illegal users of water for violations of this Ordinance or of the terms and conditions of any Appropriation Right or Existing Use or of any lawful order of the Engineer or the Board or any action or directive of any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance.

4. Any notice issued pursuant to subsection (3) of this Section shall specify the particular violation or violations, the step(s) to be taken to come into compliance, and identify a reasonable time frame within which such steps are to be taken.

5. In the event of non-compliance with any written notice issued pursuant to subsection (3) of this Section within the specified time frame, the Engineer may move the Board to exercise its powers pursuant to Sections 3-1-112 and 3-1-113 of this Ordinance.

6. Upon receipt of any written recommendation, pursuant to Section 3-1-115(3) of this Ordinance, from any Water Commissioner, the Engineer or Designee may reject the recommendation or may issue notice of intent to hold a hearing to determine whether the imposition of such conditions identified in the recommendation is warranted. The process for the consideration and resolution of any such matter shall be as set forth in Sections 3-1-105 through 3-1-108 of this Ordinance, with the recommendation being treated as a petition, the Water Commissioner as the Petitioner and the affected water user(s) as Respondent(s).

3-1-111. Expedited Appeal to the Board in the Event of Certain Actions by the Engineer.

1. Any Appropriator whose use of water is affected by an action taken pursuant to Section 3-1-109 or 3-1-110(2) of this Ordinance may file a written notice of appeal with the Board (and become an Appellant). The notice of appeal must describe with particularity the action being appealed and the justification for the appeal.

2. The Board must immediately notify the Engineer of the filing of a notice of appeal pursuant to subsection (1) of this Section, and must hear the appeal within 10 days of the notice of appeal being filed.

3. If the Board finds in favor of the Appellant, it may award appropriate relief, including declaratory relief, but not monetary penalties against the Office of the Engineer or any employee thereof, including any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, acting in either their professional or personal capacities.

3-1-112. Additional Enforcement Powers of the Board. Upon motion by the Engineer, and after notice to any affected Appropriator and the opportunity for all parties to be heard, the Board may:

1. Impose fines, as set forth in Section 3-1-113 of this Ordinance.

2. Impose conditions on the future use of any Appropriation Right to prevent further violation, but only upon a finding that the holder of any such Appropriation Right is violating or has violated any provision of that Appropriation Right, or is violating or has violated any order issued by the Engineer or any directive of any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance concerning the use of that permit. The process for appeal from any Board decision imposing conditions pursuant to this Section shall be as set forth in Section 2-2-112 of this Ordinance.

3. Revoke or suspend any Appropriation Right, but only upon a finding that the holder of any such Appropriation Right is willfully violating or has willfully violated any provision of that Appropriation Right, or is willfully violating or has willfully violated any order issued by the Engineer concerning the use of that Appropriation Right. The process for appeal from any Board decision revoking or suspending a permit shall be as set forth in Section 2-2-112 of this Ordinance.

3-1-113. Fines.

1. The Board, pursuant to the provisions of this Section, may impose a fine not to exceed $1,000 per violation on any Person who fails to comply with the provisions of this Ordinance, including any written order of the Board or Engineer or written directive of any Water Commissioner.

2. If a Person is using water under the color of law, fines may only be imposed commencing on the day after the resolution of any appeal from the written order of the Board or Engineer or action or written directive of any Water Commissioner whose violation gives rise to the proposed imposition of fines, or the deadline for filing an appeal if no appeal is filed, after receipt of a written notice of violation pursuant to Section 3-1-111(2) of this Ordinance.

3. If a Person is using water Illegally, the Board may impose fines on that Person at any time commencing from the date of that Person's receipt of the notice of violation from the Engineer pursuant to section 3-1-111(3)(a) of this Ordinance, if the Illegal use is not ceased immediately upon receipt of the notice of violation.

4. Each day of violation constitutes a separate violation.

5. The process for appeal from any Board decision imposing fines pursuant to this Section shall be as set forth in Section 2-2-112 of this Ordinance.

3-1-114. Appointment of Water Commissioners. Pursuant to Article IV.I.5.d of the Compact, the Board may appoint one or more Water Commissioners to provide day-to-day administration of water on the Reservation. The appointment shall specify the geographic area for which the commissioner shall have responsibility.

3-1-115. Powers and Duties of Water Commissioners. Subject to the jurisdictional limitation set forth in Article IV.I.5.d.ii of the Compact and Section 3-1-101(1) of this Ordinance, any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance:

1. Shall, consistent with the terms and conditions of the Compact, the federal legislation ratifying the Compact, this Ordinance, and the terms of all applicable Appropriation Rights and Existing Uses, distribute water in the proper priority;

2. Shall, as near as may be practicable, divide, regulate and control the use of the water of all streams, springs, lakes or other sources of water within that Water Commissioner's district to prevent the Waste of water or its use in excess of the volume to which any Appropriator is lawfully entitled, including through the opening and closing of headgates. Whenever a Water Commissioner regulates a headgate to a ditch or the controlling Works of reservoirs, it shall be that Water Commissioner's duty to attach to such headgate or controlling Works a written notice, properly dated and signed, setting forth the fact that such headgate or controlling Works has been properly regulated and is wholly under the Water Commissioner's control and such notice shall be a legal notice to all parties interested in the division and distribution of the water of such ditch or reservoir;

3. Shall notify the Engineer in writing of the non-compliance of any water user with a prior order of the Engineer or the Board or any prior written directive of that Water Commissioner issued pursuant to subsection (4) of this Section;

4. May issue written directives to any Appropriator, or any Illegal user of water, concerning day-to-day actions that must be taken to facilitate the execution of the duties of that Water Commissioner as set forth in subsections (1) and (2) of this Section; and

5. May recommend to the Engineer, in writing, conditions to be placed on the exercise of any Appropriation Right or Existing Use on the Reservation, including the requirement of measuring devices and the necessity of structural changes to diversion or other structures. The Water Commissioner shall serve copies of any such written recommendation on the Appropriator(s) whose Appropriation Right(s) or Existing Use(s) are referenced in the recommendation.

3-1-116. Recourse from Water Commissioner Decisions. Any Person who may be injured by the action or inaction of a Water Commissioner has the right to petition the Engineer pursuant to the provisions of Section 3-1-105 of this Ordinance.

3-1-117. Removal of Water Commissioners. Water Commissioners shall serve at the pleasure of the Board and may be removed by unanimous vote of the Board at any time.

History: En. Sec. 2, Ch. 294, L. 2015.

CHAPTERS 21 THROUGH 24
RESERVED

CHAPTER 25
COLUMBIA RIVER TREATY ACCOUNT

Part 1 — General Provisions

85-25-101. Definitions.
85-25-102. Columbia River treaty account — use.

Part 1
General Provisions

85-25-101. *(Effective on occurrence of contingency)* **Definitions.** As used in this chapter, the following definitions apply:

(1) "Columbia River treaty" or "treaty" means the Columbia River treaty between Canada and the United States relating to cooperative development of the water resources of the Columbia River basin.

(2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

History: En. Sec. 1, Ch. 383, L. 2015.

Compiler's Comments

Effective Date — Contingency: Section 5, Ch. 383, L. 2015, provided: "[This act] is effective when the state receives money from Bonneville Power Administration, the United States federal government, BC Hydro, the British Columbia provincial government, or the federal government of Canada or from another entity that benefits from the waters stored in Lincoln County through irrigation, navigation, recreation, hydropower generation, or other uses."

85-25-102. *(Effective on occurrence of contingency)* **Columbia River treaty account — use.** (1) There is an account within the state special revenue fund provided for in 17-2-102 called the Columbia River treaty account. The department shall administer the account.

(2) The Columbia River treaty account must be used to:

(a) disburse funds to Lincoln County to compensate the county for storage of floodwaters and general river flow, which provides protection of life and property downstream as well as considerable economic benefit over a broad region; and

(b) transfer funds to the state general fund pursuant to subsection (4)(b).

(3) Any money received by the state related to the Columbia River treaty must be deposited in the account.

(4) (a) No later than July 15 following the close of the preceding fiscal year, the department shall distribute to Lincoln County 80% of all funds deposited into the account during the preceding fiscal year.

(b) The department shall transfer the remaining funds deposited into the account during the preceding fiscal year to the state general fund.

(5) Funds in the account are statutorily appropriated, as provided in 17-7-502, to the department for the purposes provided in subsection (2).

(6) Lincoln County shall use the funds received from the account for schools, roads, and general operations and to establish a trust fund with the interest made available for projects and programs that promote social, economic, and environmental well-being in Lincoln County.

History: En. Sec. 2, Ch. 383, L. 2015.

Compiler's Comments

Effective Date — Contingency: Section 5, Ch. 383, L. 2015, provided: "[This act] is effective when the state receives money from Bonneville Power Administration, the United States federal government, BC Hydro, the British Columbia provincial government, or the federal government of Canada or from another entity that benefits from the waters stored in Lincoln County through irrigation, navigation, recreation, hydropower generation, or other uses."

CHAPTER 26
COLUMBIA RIVER TREATY ACCOUNT

Part 1 — General Provisions

85-26-101. Definitions.
85-26-102. Columbia River treaty account — use.

Part 1
General Provisions

85-26-101. (*Effective on occurrence of contingency*) Definitions. As used in this chapter, the following definitions apply:

(1) "Columbia River treaty" or "treaty" means the Columbia River treaty between Canada and the United States relating to cooperative development of the water resources of the Columbia River basin.

(2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

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85-26-102. (*Effective on occurrence of contingency*) Columbia River treaty account — use. (1) There is an account within the state special revenue fund provided for in 17-2-102 called the Columbia River treaty account. The department shall administer the account.

(2) The Columbia River treaty account must be used to:

(a) disburse funds to Lincoln County to compensate the county for storage of floodwaters and general river flow, which provides protection of life and property downstream as well as considerable economic benefit over a broad region; and

(b) transfer funds to the state general fund pursuant to subsection (4)(b).

(3) Any money received by the state related to the Columbia River treaty must be deposited in the account.

(4) (a) No later than July 15 following the close of the preceding fiscal year, the department shall distribute to Lincoln County 80% of all funds deposited into the account during the preceding fiscal year.

(b) The department shall transfer the remaining funds deposited into the account during the preceding fiscal year to the state general fund.

(5) Funds in the account are statutorily appropriated, as provided in 17-7-502, to the department for the purposes provided in subsection (2).

(6) Lincoln County shall use the funds received from the account for schools, roads, and general operations and to establish a trust fund with the interest made available for projects and programs that promote social, economic, and environmental well-being in Lincoln County.

History: En. Sec. 2, Ch. 383, L. 2015.

Compiler's Comments

Effective Date — Contingency: Section 5, Ch. 383, L. 2015, provided: "[This act] is effective when the state receives money from Bonneville Power Administration, the United States federal government, BC Hydro, the British Columbia provincial government, or the federal government of Canada or from another entity that benefits from the waters stored in Lincoln County through irrigation, navigation, recreation, hydropower generation, or other uses."

TITLE 86
RESERVED

TITLE 87

FISH AND WILDLIFE

Ch.
1. Organization and Operation.
2. Fishing, Hunting, and Trapping Licenses.
3. Restrictions and Regulations.
4. Commercial Activities.
5. Wildlife Protection.
6. Fish and Wildlife Criminal Provisions.

CHAPTER 1

ORGANIZATION AND OPERATION

Part 1 — General Provisions

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Part 1
General Provisions

87-1-101. Definitions. Unless the context requires otherwise, in this title the following definitions apply:

(1) "Board" means the state parks and recreation board provided for in 2-15-3406.

(2) "Commission" means the fish and wildlife commission provided for in 2-15-3402.

(3) "Department" means the department of fish, wildlife, and parks provided for in Title 2, chapter 15, part 34.

(4) "Director" means the director of fish, wildlife, and parks provided for in 2-15-3401.

(5) "Warden" means a state fish and game warden.

History: En. 26-101.1 by Sec. 1, Ch. 511, L. 1973; amd. Sec. 3, Ch. 417, L. 1977; R.C.M. 1947, 26-101.1; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 2, Ch. 28, L. 1991; amd. Sec. 24, Ch. 235, L. 2013.

87-1-102. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 23, Ch. 238, L. 1921; re-en. Sec. 3706, R.C.M. 1921; amd. Sec. 23, Ch. 192, L. 1925; re-en. Sec. 3706, R.C.M. 1935; amd. Sec. 9, Ch. 224, L. 1947; amd. Sec. 1, Ch. 159, L. 1955; amd. Sec. 29, Ch. 511, L. 1973; amd. Sec. 34, Ch. 9, L. 1977; amd. Secs. 13, 14, Ch. 417, L. 1977; amd. Sec. 1, Ch. 465, L. 1977; R.C.M. 1947, 26-324; amd. Sec. 1, Ch. 334, L. 1987; amd. Sec. 1, Ch. 132, L. 1989; amd. Sec. 2, Ch. 277, L. 1991; amd. Sec. 7, Ch. 609, L. 1991; amd. Sec. 1, Ch. 101, L. 1995; amd. Sec. 1, Ch. 417, L. 1995; amd. Sec. 96, Ch. 552, L. 1997; amd. Sec. 2, Ch. 499, L. 1999; amd. Sec. 2, Ch. 502, L. 1999; amd. Sec. 1, Ch. 59, L. 2005; amd. Sec. 4, Ch. 121, L. 2009; amd. Sec. 1, Ch. 229, L. 2009; amd. Sec. 1, Ch. 253, L. 2009.

87-1-103. Fines, bonds, and penalties. All fines, bonds, and penalties mentioned in this title may be collected by civil action in the name of the state in any court of competent jurisdiction. All fines, bonds, and costs shall be collected without stay of execution.

History: En. Sec. 74, Ch. 173, L. 1917; re-en. Sec. 3753, R.C.M. 1921; amd. Sec. 25, Ch. 77, L. 1923; re-en. Sec. 3753, R.C.M. 1935; amd. Sec. 41, Ch. 511, L. 1973; R.C.M. 1947, 26-1001.

87-1-104. Payment of cost bill to county. In a prosecution for the violation of fish and game laws where costs are incurred, a cost bill shall be prepared. The cost bill shall include the cost of board of prisoners and shall be presented to the department of administration. If the costs are allowed, the state treasurer shall pay them out of the fish and game moneys in the state special revenue fund to the treasurer of the county where the costs were incurred.

History: En. Sec. 75, Ch. 173, L. 1917; re-en. Sec. 3754, R.C.M. 1921; re-en. Sec. 3754, R.C.M. 1935; amd. Sec. 42, Ch. 511, L. 1973; R.C.M. 1947, 26-1002; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Payment of prosecution cost bills, 87-1-601.

87-1-105. Duty of attorney general and county attorneys. The attorney general of the state is the legal adviser of the department and shall, together with the several county attorneys, enforce the provisions of this title.

History: En. Sec. 26, Ch. 193, L. 1921; re-en. Sec. 3675, R.C.M. 1921; re-en. Sec. 3675, R.C.M. 1935; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-126; amd. Sec. 1, Ch. 44, L. 1979.

87-1-106. Fish, wildlife, and parks offices. The principal offices of the commission, the board, and the department must be located in or near Helena, and suitable and adequate space therefor together with janitor services, light, heat, and water must be furnished by the state of Montana.

History: En. Sec. 3, Ch. 193, L. 1921; re-en. Sec. 3652, R.C.M. 1921; amd. Sec. 1, Ch. 77, L. 1923; amd. Sec. 1, Ch. 192, L. 1925; re-en. Sec. 3652, R.C.M. 1935; amd. Sec. 1, Ch. 114, L. 1945; amd. Sec. 1, Ch. 52, L. 1957; amd. Sec. 1, Ch. 119, L. 1959; amd. Sec. 23, Ch. 271, L. 1963; amd. Sec. 2, Ch. 511, L. 1973; R.C.M. 1947, 26-103(part); amd. Sec. 1, Ch. 340, L. 1985; amd. Sec. 25, Ch. 235, L. 2013.

87-1-107. Right to harvest — legislative intent. The legislature, mindful of its constitutional obligations under Article II, section 3, of the Montana constitution protecting the inalienable rights of a person to pursue life's basic necessities, enjoy the person's life and liberties, and pursue happiness in all lawful ways, and Article IX, section 7, of the Montana constitution protecting the opportunity for a person to harvest wild fish and wild game animals while not diminishing other private rights, has enacted the laws of this title pertaining to the lawful means of hunting, fishing, and trapping, as defined in 87-2-101 and 87-6-101, as adequate remedies for the preservation of the harvest heritage of the individual citizens of this state.

History: En. Sec. 1, Ch. 105, L. 2015.

Cross-References

Declaration of rights, Art. II, sec. 3, Mont. Const.
Preservation of harvest heritage, Art. IX, sec. 7, Mont. Const.

87-1-108. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 3, Ch. 277, L. 1991; amd. Sec. 97, Ch. 552, L. 1997.

87-1-109. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 9, Ch. 277, L. 1991.

87-1-110. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 1, Ch. 161, L. 1997.

87-1-111. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 1, Ch. 523, L. 1987; amd. Sec. 2, Ch. 142, L. 1989; amd. Sec. 3, Ch. 409, L. 1989; amd. Sec. 4, Ch. 329, L. 1991; amd. Sec. 2, Ch. 417, L. 1995; amd. Sec. 3, Ch. 502, L. 1999; amd. Sec. 1, Ch. 227, L. 2005; amd. Sec. 5, Ch. 415, L. 2007.

87-1-112. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 2, Ch. 523, L. 1987; amd. Sec. 3, Ch. 142, L. 1989; amd. Sec. 25, Ch. 395, L. 1999; amd. Sec. 4, Ch. 502, L. 1999.

87-1-113. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 3, Ch. 523, L. 1987; amd. Sec. 5, Ch. 502, L. 1999.

87-1-114. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 4, Ch. 523, L. 1987; amd. Sec. 4, Ch. 142, L. 1989; amd. Sec. 74, Ch. 509, L. 1995; amd. Sec. 3, Ch. 499, L. 1999; amd. Sec. 6, Ch. 502, L. 1999; amd. Sec. 44, Ch. 257, L. 2001; amd. Sec. 1, Ch. 500, L. 2007.

87-1-115. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 1, Ch. 502, L. 1999; amd. Sec. 2, Ch. 227, L. 2005.

87-1-116 through 87-1-119 reserved.

87-1-120. Remedial hunter education program. (1) The department shall develop a remedial hunter education program for hunting law violators.

(2) The program must be funded through money collected by a court pursuant to 87-6-905 through 87-6-908.

(3) The department shall determine the qualifications for instructors, hire the instructors, and pay the instructors at a rate determined by the department.

(4) A person who is sentenced by the court to complete a remedial hunter education course shall pay the costs directly attributable to the person's participation in the remedial hunter education program.

(5) The course instructor shall notify the sentencing court of the participant's attendance record and of the participant's success or failure in completing the program.

(6) A participant whose hunting, fishing, or trapping license has been revoked shall successfully complete the program before license privileges may be reinstated.

History: En. Sec. 6, Ch. 499, L. 1999; amd. Sec. 85, Ch. 258, L. 2011.

87-1-121. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 7, Ch. 499, L. 1999.

87-1-122 through 87-1-124 reserved.

87-1-125. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 8, Ch. 499, L. 1999.

87-1-126. Use of exploding targets prohibited — definition — penalty. (1) The use of exploding targets on properties managed pursuant to this title is prohibited when the department of natural resources and conservation determines that fire danger is high, very high, or extreme.

(2) For the purposes of this section, "exploding targets" means commercial targets that explode when impacted by a high-velocity projectile or targets created by combining components, including but not limited to ammonium nitrate and aluminum powder, that explode when impacted by a high-velocity projectile.

(3) A person convicted of a violation of this section is guilty of a misdemeanor and shall be fined not more than $500 or be imprisoned in the county jail for not more than 6 months.

History: En. Sec. 3, Ch. 513, L. 2021.

Part 2
Department of Fish, Wildlife, and Parks

Part Cross-References

Establishment of Department and appointment of Director, 2-15-3401.
Fish and Wildlife Crimestoppers Board, 2-15-3404.
Cooperative agreements with district weed boards, 7-22-2151.

87-1-201. Powers and duties. (1) Except as provided in subsection (13), the department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. The department possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) Except as provided in subsection (13), the department shall enforce all the laws of the state regarding the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is under the control of the department and is available for appropriation to the department.

(4) The department may discharge any appointee or employee of the department for cause at any time.

(5) The department may dispose of all property owned by the state used for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) (a) The department may not issue firearms within this state to anyone except:

(i) wardens; and

(ii) other qualified employees identified, trained, and certified by the department where necessary to perform assigned duties pursuant to subsection (7).

(b) Wardens, as authorized officers under 87-1-502, are the only department employees with the authority to enforce provisions of state law or administrative rule.

(7) (a) Department employees may be issued a firearm as allowed in subsection (6)(a)(ii) only after submitting a form of final approval as determined and approved by the department.

(b) Department-issued firearms may be carried by an employee other than a warden only when the employee is engaged in work that requires the carrying of a firearm, as determined by the department.

(c) When a department-issued firearm is no longer necessary to perform an employee's required duties, the employee shall return the issued firearm to secure storage in the regional office to which the employee is attached.

(8) Except as provided in subsection (13), the department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of Title 87, chapter 2, that in its judgment will accomplish the purpose of chapter 2.

(9) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or outside of the state.

(10) (a) The department shall implement programs that:

(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.;

(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species;

(iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In implementing an elk management plan, the department shall, as necessary to achieve harvest and population objectives, request that land management agencies open public lands and public roads to public access during the big game hunting season.

(iv) in accordance with the forest management plan required by 87-1-622, address fire mitigation, pine beetle infestation, and wildlife habitat enhancement giving priority to forested lands in excess of 50 contiguous acres in any state park, fishing access site, or wildlife management area under the department's jurisdiction.

(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) Any management plan developed by the department pursuant to this subsection (10) is subject to the requirements of Title 75, chapter 1, part 1.

(d) This subsection (10) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

(11) The department shall publish an annual game count, estimating to the department's best ability the numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative regions of the state. In preparing the publication, the department may incorporate field observations, hunter reporting statistics, or any other suitable method of determining game numbers. The publication must include an explanation of the basis used in determining the game count.

(12) The department shall report current sage grouse population numbers, including the number of leks, to the Montana sage grouse oversight team, established in 2-15-243, and the environmental quality council in accordance with 5-11-210 on an annual basis. The report must include seasonal and historic population data available from the department or any other source.

(13) The department may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

(a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons and the special muzzleloader heritage hunting season established in 87-1-304;

(b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including bows and arrows, traditional handguns, and muzzleloading rifles;

(c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);

(d) the regulation of migratory game bird hunting pursuant to 87-3-403; or

(e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h).

(14) The department shall publish an annual public report that shows the number of licenses sold to nonresidents in the previous license year for each species in which the purchase of a license or permit is required. The report must also show how many licenses were issued through opportunities or programs for nonresidents, such as those for the following:

(a) youths;
(b) college students;
(c) nonresidents who were former residents;
(d) nonresident licenses purchased by utilizing an outfitter preference point;
(e) sponsorships by a landowner, family member, or current Montana resident; or
(f) any other license opportunity or program for nonresidents.

(15) The department shall publish an annual public report that shows the data on each hunting district for elk, deer, and antelope by both resident and nonresident hunters. The report must be created using currently available data and must include:

(a) the estimated number of resident hunters, nonresident hunters, and total hunters who hunted in the district;

(b) the estimated number of days the district was hunted by resident hunters, nonresident hunters, and total hunters;

(c) the estimated average number of days that resident hunters, nonresident hunters, and total hunters used the district per hunter; and

(d) the species being hunted in the district.

History: **Ap. p. Sec. 4, Ch. 193, L. 1921; re-en. Sec. 3653, R.C.M. 1921; amd. Sec. 2, Ch. 77, L. 1923; amd. Sec. 2, Ch. 192, L. 1925; amd. Sec. 1, Ch. 200, L. 1935; re-en. Sec. 3653, R.C.M. 1935; amd. Sec. 1, Ch. 157, L. 1941; amd. Sec. 1, Ch. 40, L. 1951; amd. Sec. 1, Ch. 157, L. 1955; amd. Sec. 1, Ch. 151, L. 1957; amd. Sec. 1, Ch. 36, L. 1959; amd. Sec. 1, Ch. 96, L. 1959; amd. Sec. 1, Ch. 173, L. 1965; amd. Sec. 1, Ch. 344, L. 1969; amd. Sec. 1, Ch. 279, L. 1971; amd. Sec. 1, Ch. 364, L. 1973; amd. Sec. 3, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-104, R.C.M. 1947; Ap. p. Sec. 4, Ch. 267, L. 1955; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-202.4, R.C.M. 1947; Ap. p. Sec. 1, Ch. 239, L. 1965; amd. Sec. 2, Ch. 319, L. 1967; amd. Sec. 4, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-202.5, R.C.M. 1947; R.C.M. 1947, 26-104, 26-202.4, 26-202.5(2); amd. Sec. 2, Ch. 44, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 459, L. 1995; amd. Sec. 1, Ch. 369, L. 1999; amd. Sec. 1, Ch. 454, L. 2003; amd. Sec. 1, Ch. 461, L. 2003; amd. Sec. 6, Ch. 553, L. 2003; amd. Sec. 1, Ch. 262, L. 2007; amd. Sec. 17, Ch. 10, L. 2009; amd. Sec. 2, Ch. 330, L. 2009; amd. Sec. 1, Ch. 370, L. 2011; amd. Sec. 2, Ch. 395, L. 2011; amd. Sec. 1, Ch. 109, L. 2017; amd. Sec. 1, Ch. 232, L. 2021; amd. Sec. 124, Ch. 261, L. 2021; amd. Sec. 1, Ch. 117, L. 2023; amd. Sec. 1, Ch. 212, L. 2023; amd. Sec. 1, Ch. 89, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 89, L. 2025. Amendment effective October 1, 2025.

Study of Nonresident Hunting Impact: Section 2, Ch. 493, L. 2025, required the Department of Fish, Wildlife, and Parks to study the impact of nonresident hunting and prepare a report. Chapter 493 was effective May 8, 2025, and terminates December 31, 2026.

Cross-References

Seasonal rules adopted annually, 2-4-102.
Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.
Game wardens' and peace officers' retirement — state contribution, 19-8-504.
Local government denied powers affecting Title 87, 7-1-111.
Suspension, demotion, or removal of employees, 87-1-403.
Enforcement of fish and wildlife laws — generally, 87-1-404.
Enforcement of Department orders and rules, 87-1-404, 87-1-502, 87-1-506.
Seizure of game or hides, 87-1-506.
Money from seized game or hides, 87-1-513, 87-1-601.
Money from fines, 87-1-601, 87-4-808.
Disposition of fees for licenses and permits, 87-1-601, 87-1-605, 87-1-701, 87-1-708, 87-1-710, 87-2-204, 87-4-411, 87-4-602.
Disposition of sale proceeds from confiscated birds and animals, 87-1-601, 87-4-808.
Fish and wildlife appropriations, 87-1-601.
Sources of funds, 87-1-601, 87-1-605, 87-1-701, 87-1-708, 87-1-710.
Use of proceeds from auction of mountain sheep license, 87-2-722.
Department jurisdiction over alternative livestock ranches, 87-4-408.
Commission authorized to regulate grizzly bear, 87-5-302.
Permit for carrying weapons, 87-5-401.
Stream protection — enforcement powers of Department, 87-5-509.

87-1-202. Publication of orders and rules. (1) Except as provided in subsection (2), annual and biennial rules adopted by the commission setting seasonal hunting, fishing, trapping, and land use regulations or by the board setting seasonal land use regulations must be published in a pamphlet format that is made available to the public at all department offices and through all license providers.

(2) Site-specific land use regulations applicable to a particular fishing access site, wildlife management area, park site, or other department land, including but not limited to speed limits, road and off-road restrictions or closures, places where camping is allowed or prohibited, and seasonal closures for management purposes, must be indicated to the public by signs on the premises of the particular fishing access site, wildlife management area, park site, or other department land.

(3) (a) Commission orders setting management seasons, providing for game damage hunts, and closing special seasons pursuant to 87-1-304 may be published by:

(i) use of the department's website;

(ii) use of a telephone hotline number; or

(iii) any other method that is readily available to the public.

(b) The method for notifying the public of the closure of a special season must be stated in the rule that establishes the special season.

(4) Public notification of emergency closures of department lands, public waterways, and hunting, fishing, and trapping seasons that are based on public health, safety, and welfare must be made in the manner and to the extent that the department considers necessary in light of the facts surrounding the emergency, including, when practical, onsite posting of the emergency closure.

History: En. Sec. 28, Ch. 193, L. 1921; re-en. Sec. 3677, R.C.M. 1921; amd. Sec. 11, Ch. 192, L. 1925; re-en. Sec. 3677, R.C.M. 1935; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-128; amd. Sec. 1, Ch. 16, L. 2007; amd. Sec. 26, Ch. 235, L. 2013.

Cross-References

Seasonal rules adopted annually, 2-4-102.

Boats — publication of orders and rules, 23-2-504.

Privilege of entry unless posted, 45-6-201.

Publication of boundaries of fish and game districts, preserves, refuges, sanctuaries, or rest grounds, 87-5-402.

87-1-203. Effect of orders, rules, and regulations. All orders and rules and regulations for the enforcement of the powers granted to the department shall take effect and be in force after publication and posting as prescribed in this chapter and when so published or posted shall constitute legal notice.

History: En. Sec. 29, Ch. 193, L. 1921; re-en. Sec. 3678, R.C.M. 1921; re-en. Sec. 3678, R.C.M. 1935; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-129.

87-1-204. Political activity of employees. While retaining the right to vote as the employee pleases and to express opinions on all political questions, an employee of the department may not use the employee's official authority or influence for the purpose of interfering with an election or affecting the results of an election or for the purpose of coercing or influencing the political actions of any person or body.

History: En. Sec. 9, Ch. 193, L. 1921; re-en. Sec. 3658, R.C.M. 1921; re-en. Sec. 3658, R.C.M. 1935; amd. Sec. 1, Ch. 21, L. 1955; amd. Sec. 4, Ch. 188, L. 1975; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-109; amd. Sec. 2829, Ch. 56, L. 2009.

Cross-References

Rules of conduct for public officers and public employees, 2-2-121.

87-1-205. Repealed. Sec. 2, Ch. 56, L. 2021.

History: En. 26-109.1 by Sec. 18, Ch. 417, L. 1977; R.C.M. 1947, 26-109.1; amd. Sec. 3, Ch. 44, L. 1979; amd. Sec. 2830, Ch. 56, L. 2009.

87-1-206. Bounty claims for wild animals. (1) The department shall pay bounty claims for wild animals that have been filed with and approved by the board of livestock. The department shall pay out of the state fish and game funds, other than those funds derived from license fees paid by hunters and anglers, bounties on predatory wild animals as the bounty claims are presented, not exceeding $7,500 for each calendar year.

(2) The board of livestock shall, after approving the bounty claim, deliver the claim to the department for rejection or approval. If the claim or certificate is rejected, it must be returned by the department to the board of livestock. If approved, it must be delivered to the department of administration for allowance or disallowance. This section does not take from the department the exclusive power to administer the fish and game money at its discretion.

(3) If the department of administration allows the claim, the department shall draw a warrant on the state fish and game money in the state special revenue fund for the amount approved in favor of the claimant in the order in which the claim is approved.

History: **En. Sec. 2, Ch. 174, L. 1939; amd. Sec. 23, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-210; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 33, Ch. 325, L. 1995; amd. Sec. 2831, Ch. 56, L. 2009.**

Cross-References

Claims procedure, Title 81, ch. 7, part 1.

87-1-207. Establishment of checking stations. (1) Pursuant to subsection (2), the department is authorized to establish checking stations when considered necessary to inspect licenses of hunters and anglers and to inspect any game animals, fish, or fur-bearing animals in the possession of hunters and anglers.

(2) The department shall provide notice to the county sheriff before establishing a checking station in that county.

History: **En. Sec. 1, Ch. 270, L. 1973; R.C.M. 1947, 26-137; amd. Sec. 2832, Ch. 56, L. 2009; amd. Sec. 1, Ch. 467, L. 2023.**

Cross-References

Duty of wardens, 87-1-502.

87-1-208. Repealed. Sec. 120, Ch. 258, L. 2011.

History: **En. Sec. 2, Ch. 270, L. 1973; R.C.M. 1947, 26-138; amd. Sec. 2833, Ch. 56, L. 2009.**

87-1-209. Acquisition and sale of lands or waters. (1) (a) Subject to 87-1-218 and subsection (8) of this section, the department, with the consent of the commission or the board, may acquire for the purpose listed in subsection (1)(b):

(i) land or water by purchase, lease, agreement, gift, transfer, or devise. In the case of land acquisition involving more than 500 acres or land or water acquisition of more than $1 million in value, the approval of the board of land commissioners is also required.

(ii) easements on lands or waters. In the case of easements for which more than $1 million in state funds will be used for the acquisition, the approval of the board of land commissioners is also required. The department shall inform the board of land commissioners of the pending easement once it receives initial endorsement from the commission or board.

(b) The department may develop, operate, and maintain acquired lands or waters:

(i) for fish hatcheries or nursery ponds;

(ii) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(iii) for public hunting, fishing, or trapping areas;

(iv) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(v) for state parks and outdoor recreation;

(vi) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the board, may acquire by condemnation, as provided in Title 70, chapter 30, lands or structures for the preservation of historic or archaeological sites that are threatened with destruction or alteration.

(3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the commission or the board, may dispose of lands and water rights acquired by it on those terms after public notice as required by subsection (3)(b) of this section, without regard to other laws that provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission or the board, may convey department lands and water rights for full market value to other governmental entities or to adjacent landowners without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than $20,000. When the department conveys land or water rights to another governmental entity or to an adjacent landowner pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Subject to section 2(3), Chapter 560, Laws of 2005, notice of sale describing the lands or waters to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the lands and waters as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the lands or water rights at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) When necessary and advisable for the management and use of department property, the director is authorized to grant or acquire from willing sellers right-of-way easements for purposes of utilities, roads, drainage facilities, ditches for water conveyance, and pipelines if the full market value of the interest to be acquired is less than $20,000. Whenever possible, easements must include a weed management plan. Approval of the commission or the board is not required for grants and acquisitions made pursuant to this subsection. In granting any right-of-way pursuant to this subsection, the department shall obtain a fair market value, but the department is not otherwise required to follow the disposal requirements of subsection (3). The director shall report any easement grant or acquisition made pursuant to this subsection to the commission or the board at its next regular meeting.

(5) The department shall convey lands and water rights without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(6) Subject to 87-1-218, the department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(7) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land.

(8) Approval of the board for the acquisition or disposal of land or water pursuant to this section is required only for land and water administered under Title 23, chapter 1, or Title 23, chapter 2, parts 1 and 4.

History: En. 26-104.6 by Sec. 7, Ch. 511, L. 1973; amd. Sec. 1, Ch. 157, L. 1975; amd. Sec. 4, Ch. 417, L. 1977; R.C.M. 1947, 26-104.6; amd. Sec. 2, Ch. 379, L. 1979; amd. Sec. 2, Ch. 230, L. 1981; amd. Sec. 2, Ch. 418, L. 1981; amd. Sec. 50, Ch. 519, L. 1983; amd. Sec. 2, Ch. 340, L. 1985; amd. Sec. 151, Ch. 370, L. 1987; amd. Sec. 1, Ch. 110, L. 1993; amd. Sec. 1, Ch. 184, L. 1997; amd. Sec. 78, Ch. 7, L. 2001; amd. Sec. 109, Ch. 125, L. 2001; amd. Sec. 131, Ch. 114, L. 2003; amd. Sec. 1, Ch. 430, L. 2005; amd. Sec. 14, Ch. 560, L. 2005; amd. Sec. 4, Ch. 427, L. 2009; amd. Sec. 6, Ch. 485, L. 2009; amd. Sec. 27, Ch. 235, L. 2013; amd. Sec. 1, Ch. 149, L. 2021.

Cross-References

Acquisition of recreational areas, Art. IX, sec. 4, Mont. Const.; 23-1-102; 23-2-103.
Leases for lands or waters, 23-1-102.
Creating state campground subject to local subdivision review, Title 76, ch. 3.
State lands sales, Title 77, ch. 1, parts 1 and 2.
Acquisition of hunting rights on land adjoining federal wildlife preserve, 87-1-227.
Funding for wildlife habitat, 87-1-242.
Commission approval of acquisitions, exchanges, or sales, 87-1-301.
Acquisition or exchange of lands, 87-1-301, 87-1-701, 87-1-703, 87-1-709, 87-1-711.
Acquisition or exchange of waters, 87-1-301, 87-1-713, 87-1-714.
Uses to be itemized in lease and easement agreements, 87-1-303.
Acquisition of recreational facilities, 87-1-605.

87-1-210. Research, training, and other projects. (1) The department may enter into cooperative agreements with educational institutions and state, federal, or other agencies to promote wildlife research and to train personnel for wildlife management. It may enter into cooperative agreements with federal agencies, municipalities, corporations, organized groups of landowners, associations, and individuals for the development of game, bird, fish, or fur-bearing animal management and demonstration projects.

(2) It may establish and maintain an educational and biological program for the collection and diffusion of statistics and information germane to the purpose of this title.

History: En. 26-104.7 by Sec. 8, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-104.7; amd. Sec. 2834, Ch. 56, L. 2009.

Cross-References

Cooperative agreements, 23-1-107, 87-1-228, 87-1-303, 87-5-108.
State scientific and recreational park, Title 23, ch. 1, part 2; 87-5-404.
Hunter management and hunting access enhancement programs, 87-1-265 through 87-1-269.
Future fisheries improvement program, 87-1-272, 87-1-273.

87-1-211. Repealed. Sec. 3, Ch. 340, L. 1985; sec. 2, Ch. 648, L. 1985.

History: En. Sec. 19, Ch. 193, L. 1921; re-en. Sec. 3668, R.C.M. 1921; re-en. Sec. 3668, R.C.M. 1935; amd. Sec. 1, Ch. 186, L. 1969; amd. Sec. 7, Ch. 417, L. 1977; R.C.M. 1947, 26-119.

87-1-212. Terminated. Sec. 6, Ch. 234, L. 1991.

History: En. Sec. 1, Ch. 234, L. 1991.

87-1-213. Wildlife location data and telemetry frequencies — data-sharing agreements. (1) Except as provided in subsections (2) through (5) or as otherwise provided by law, the department may not release wildlife location data or telemetry frequencies, whether collected by the department or held by the department, of hunted or trapped animals.

(2) Wildlife location data used as part of a study that includes a completion report may be released 1 year after the completion of the study and report.

(3) Wildlife location data that is not used as part of a study may be released 1 year after the department collects or acquires the data.

(4) The department may release wildlife location data for environmental permitting activities.

(5) Subject to the restrictions in subsections (2) and (3), the department may share wildlife location data with project partners and other government agencies through data-sharing agreements.

History: En. Sec. 1, Ch. 433, L. 2025.

Compiler's Comments

Effective Date: This section is effective October 1, 2025.

87-1-214. Disclosure of information — legislative finding — large predators. (1) Except for information that is required by law to be reported to state or federal officials, the department may not disclose any information that may identify any person who obtains a permit or license to take a large predator as defined in 87-1-217 or who lawfully takes a large predator without the written consent of the person affected. Information that may not be disclosed includes but is not limited to a person's name, address, phone number, date of birth, social security number, and driver's license number.

(2) The legislature finds that the prohibition on disclosure of information pursuant to subsection (1) is necessary to protect an individual's privacy, safety, and welfare.

(3) The department may publish harvest locations of large predators at the hunting district level.

History: En. Sec. 1, Ch. 178, L. 2011; amd. Sec. 1, Ch. 461, L. 2023.

87-1-215. Repealed. Sec. 4, Ch. 346, L. 1995.

History: En. Sec. 2, Ch. 401, L. 1991.

87-1-216. Wild buffalo or bison as species in need of management — policy — department duties. (1) The legislature finds that significant potential exists for the spread of contagious disease to persons or livestock in Montana and for damage to persons and property by wild buffalo or bison. It is the purpose of this section:

(a) to designate publicly owned wild buffalo or bison originating from Yellowstone national park as a species requiring disease control;

(b) to designate other wild buffalo or bison as a species in need of management; and

(c) to set out specific duties for the department for management of the species.

(2) The department:

(a) is responsible for the management, including but not limited to public hunting, of wild buffalo or bison in this state that have not been exposed to or infected with a dangerous or contagious disease but may threaten persons or property;

(b) shall consult and coordinate with the department of livestock on implementation of the provisions of subsection (2)(a) to the extent necessary to ensure that wild buffalo or bison remain disease-free; and

(c) shall cooperate with the department of livestock in managing publicly owned wild buffalo or bison that enter the state on public or private land from a herd that is infected with a dangerous disease, as provided in 81-2-120, under a plan approved by the governor. The department of livestock is authorized under the provisions of 81-2-120 to regulate publicly owned wild buffalo or bison in this state that pose a threat to persons or livestock in Montana through the transmission of contagious disease. The department may, after agreement and authorization by the department of livestock, authorize the public hunting of wild buffalo or bison that have been exposed to or infected with a contagious disease, pursuant to 87-2-730. The department may, following consultation with the department of livestock, adopt rules to authorize the taking of bison where and when necessary to prevent the transmission of a contagious disease.

(3) The department may adopt rules with regard to wild buffalo or bison that have not been exposed to or infected with a contagious disease but are in need of management because of potential damage to persons or property.

(4) The department may not:

(a) release, transplant, relocate, or allow wild buffalo or bison on any private or public land in Montana that has not been authorized for that use by the private or public owner; or

(b) except for a transfer to a qualified tribal entity pursuant to 81-2-120(1)(a)(ii), release, transplant, or relocate any wild buffalo or bison into any county in the state without authorization of the board of county commissioners of the affected county or counties pursuant to 7-21-3214.

(5) Subject to subsection (4), the department shall develop and adopt a management plan before any wild buffalo or bison under the department's jurisdiction may be released, transplanted, or relocated onto private or public land in Montana. A plan must include but is not limited to:

(a) measures to comply with any applicable animal health protocol required under Title 81, under subsection (2)(b), or by the state veterinarian;

(b) any animal identification and tracking protocol required by the department of livestock to identify the origin and track the movement of wild buffalo or bison for the purposes of subsections (2)(b) and (5)(c);

(c) animal containment measures that ensure that any animal released, transplanted, or relocated on private or public land will be contained in designated areas. Containment measures must include but are not limited to:

(i) any fencing required;

(ii) contingency plans to expeditiously relocate wild buffalo or bison that enter private or public property where the presence of the animals is not authorized by the private or public owner;

(iii) contingency plans to expeditiously fund and construct more effective containment measures in the event of an escape; and

(iv) contingency plans to eliminate or decrease the size of designated areas, including the expeditious relocation of wild buffalo or bison if the department is unable to effectively manage or contain the wild buffalo or bison.

(d) a reasonable means of protecting public safety and emergency measures to be implemented if public safety may be threatened;

(e) a reasonable maximum carrying capacity for any proposed designated area using sound management principles, including but not limited to forage-based carrying capacity, and methods for not exceeding that carrying capacity, including in years of drought or severe winters. The carrying capacity must be based on a forage analysis conducted in accordance with standards contained in the most recent natural resources conservation service field office technical guide by a range scientist who is on the staff of:

(i) the Montana state university-Bozeman college of agriculture;

(ii) the United States natural resources conservation service; or

(iii) a technical service provider certified by either the natural resources conservation service or the society for range management.

(f) identification of long-term, stable funding sources that would be dedicated to implementing the provisions of the management plan for each designated area.

(6) When developing a management plan in accordance with subsection (5), the department shall provide the opportunity for public comment and hold a public hearing in the affected county or counties. Prior to making a decision to release, transplant, or relocate wild buffalo or bison onto private or public land in Montana, the department shall respond to all public comment received and publish a full record of the proceedings at any public hearing.

(7) The department is liable for all costs incurred, including costs arising from protecting public safety, and any damage to private property that occurs as a result of the department's failure to meet the requirements of subsection (5).

(8) When adopting and implementing rules regarding the special wild buffalo or bison license issued pursuant to 87-2-730, the department shall consult and cooperate with the department of livestock regarding when and where public hunting may be allowed and the safe handling of wild buffalo or bison parts in order to minimize the potential for spreading any contagious disease to persons or to livestock.

History: En. Sec. 2, Ch. 346, L. 1995; amd. Sec. 3, Ch. 604, L. 2003; amd. Sec. 1, Ch. 383, L. 2011; amd. Sec. 9, Ch. 403, L. 2011; amd. Sec. 1, Ch. 172, L. 2015; amd. Sec. 4, Ch. 354, L. 2021.

Cross-References

Transplantation or relocation of wild buffalo or wild bison into county — authorization, 7-21-3214.

Taking of publicly owned wild buffalo or bison on private property, 81-2-121.

Nongame and endangered species — legislative policy, 87-5-103.

87-1-217. Policy for management of large predators — legislative intent. (1) In managing large predators, the primary goals of the department, in the order of listed priority, are to:

(a) protect humans, livestock, and pets;

(b) preserve and enhance the safety of the public during outdoor recreational and livelihood activities; and

(c) preserve citizens' opportunities to hunt large game species.

(2) With regard to large predators, it is the intent of the legislature that the specific provisions of this section concerning the management of large predators will control the general supervisory authority of the department regarding the management of all wildlife.

(3) For the management of wolves in accordance with the priorities established in subsection (1), the department may use lethal action to take problem wolves that attack livestock if the state objective for breeding pairs has been met. For the purposes of this subsection, "problem wolves" means any individual wolf or pack of wolves with a history of livestock predation.

(4) The department shall work with the livestock loss board and the United States department of agriculture wildlife services to establish the conditions under which carcasses or parts of carcasses from wolves, mountain lions, or black bears are retrieved during management activities and when those carcasses or parts of carcasses are made available to the livestock loss board for sale or auction pursuant to 2-15-3113.

(5) (a) The department shall ensure that county commissioners and tribal governments in areas that have identifiable populations of large predators have the opportunity for consultation and coordination with state and federal agencies prior to state and federal policy decisions involving large predators and large game species.

(b) The department shall provide verbal and written notice to the county commissioners, sheriff's office, and tribal government located within the county or tribal government boundaries where a large predator is to be relocated:

(i) on the finalization of an annual plan to relocate a large predator into a county or tribal government boundary other than the one it was captured in;

(ii) on the finalization of a change to a plan to relocate a large predator into a county or tribal government boundary other than the one it was captured in;

(iii) within 24 hours of the capture of a large predator if it will be relocated into a county or tribal government boundary other than the one it was captured in; and

(iv) within 24 hours of the relocation of a large predator if the relocation site has been previously approved by the commission for relocation of bears.

(6) As used in this section:

(a) "consultation" means to actively provide information to a county or tribal government regarding proposed policy decisions on matters that may have a harmful effect on agricultural production or livestock operations or that may pose a risk to human health or safety in that county or on those tribal lands and to seek information and advice from counties or tribal governments on these matters;

(b) "large game species" means deer, elk, mountain sheep, moose, antelope, and mountain goats; and

(c) "large predators" means bears, mountain lions, and wolves.

History: En. Sec. 1, Ch. 212, L. 2003; amd. Sec. 1, Ch. 275, L. 2009; amd. Sec. 2, Ch. 71, L. 2011; amd. Sec. 1, Ch. 414, L. 2011; amd. Sec. 1, Ch. 163, L. 2013; amd. Sec. 6, Ch. 76, L. 2017; amd. Sec. 1, Ch. 333, L. 2025; amd. Sec. 6, Ch. 649, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 1, Ch. 333, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 6, Ch. 649, L. 2025. Amendment effective July 1, 2025.

87-1-218. Notice of proposed land acquisitions. (1) For all land acquisitions proposed pursuant to 87-1-209, the department shall provide notice to the board of county commissioners in the county where the proposed acquisition is located.

(2) The notice must be provided at least 30 days before the proposed acquisition appears before the commission or the board for its consent.

(3) The notice must include:

(a) a description of the proposed acquisition, including acreage and the use proposed by the department;

(b) an estimate of the measures and costs the department plans to undertake in furtherance of the proposed use, including operating, staffing, and maintenance costs;

(c) an estimate of the property taxes payable on the proposed acquisition and a statement that if the department acquires the land pursuant to 87-1-603, the department would pay a sum equal to the amount of taxes that would be payable on the county assessment of the property if it was taxable to a private citizen; and

(d) a draft agenda of the meeting at which the proposed acquisition will be presented to the commission or the board and information on how the board of county commissioners may provide comment.

(4) For all land acquisitions of 640 acres or more proposed pursuant to 87-1-209, the department shall:

(a) conduct a public scoping process to identify issues and concerns as the initial phase of an environmental review pursuant to Title 75, chapter 1, part 2;

(b) provide the public with sufficient notice of the proposed acquisition and an opportunity to provide input on reasonable alternatives, mitigation alternatives, mitigation measures, issues, and potential impacts to be addressed in the environmental review; and

(c) respond to comments received during the public scoping process as part of the environmental review document.

History: En. Sec. 7, Ch. 485, L. 2009; amd. Sec. 28, Ch. 235, L. 2013; amd. Sec. 1, Ch. 326, L. 2015.

87-1-219 and 87-1-220 reserved.

87-1-221. Acquisition, importation, and propagation of fish and game — waterfowl food. The department may:

(1) acquire by gift, purchase, capture, or otherwise any fish, game, game birds, or animals for propagation, experimental, or scientific purposes;

(2) provide for the importation of game birds and game and fur-bearing animals and for the protection, propagation, and distribution of imported or native birds and animals;

(3) use fish and game funds necessary for the construction, maintenance, operation, upkeep, and repair of fish hatcheries or other property or means and appliances for the protection and propagation of fish, game and fur-bearing animals, or game or nongame birds;

(4) appropriate money from the funds at its disposal for the extermination or eradication of predatory animals that destroy fish, game or fur-bearing animals, or game or nongame birds;

(5) spend fish and game funds necessary to introduce and propagate wild waterfowl food and for that purpose may secure expert advice as to what kinds of waterfowl foods are adapted to the climate, soil, and waters of this state.

History: En. 26-104.4 by Sec. 5, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-104.4; amd. Sec. 79, Ch. 7, L. 2001; amd. Sec. 132, Ch. 114, L. 2003.

Cross-References

Predator control, Title 81, ch. 7, part 1.

Construction and maintenance of hatcheries, 87-3-201.

87-1-222. Construction and maintenance of fish hatcheries and fish ladders. (1) The department shall furnish plans for, direct, and compel the construction, installation, and repair of fish ladders upon dams and other obstructions in streams. The fish ladders shall be installed and maintained at the expense of the owners of the dam or other obstruction.

(2) The department may purchase and maintain, at the expense of the state fish and game fund, suitable fish screens, fish wheels, or other devices to install in irrigating ditches to prevent fish entering said ditches.

(3) The department may locate, lay out, construct, and maintain nurseries and rearing ponds where fry can be planted, propagated, and reared to be distributed in the waters of this state. The department may spend from fish and game funds sums necessary for this purpose.

History: En. 26-104.5 by Sec. 6, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-104.5.

Cross-References

Propagation and distribution of fry or fingerlings, 87-3-201, 87-3-202.

87-1-223. Control of state waters for propagation of fish. The department may control the waters of any lake, pond, or stream that lies wholly within the limits of land owned by the state so far as the use of that lake, pond, or stream for the breeding and propagation of game fish is concerned. Before the right to control any lake, pond, or stream inures to the department, the department shall notify the department of natural resources and conservation that the lake, pond, or stream is wanted for that purpose, giving a description of the land by legal subdivision when surveyed or a sufficient general description when not so surveyed. The department of natural resources and conservation shall make that entry upon its books and maps to serve as notice to a lessor or purchaser of the right claimed by the state in the lake, pond, or stream. The department of natural resources and conservation shall notify a lessor, purchaser, or applicant to lease or purchase of the fact that a right to the use of the lake, pond, or stream is claimed. This right may not continue for more than 1 year after the land is sold by the state. If the right to the control of a lake, pond, or stream lessens the value of that land or prevents the ready sale of it, the right granted to the department may be terminated upon giving 60 days' notice of the termination to the department.

History: En. Sec. 18, Ch. 193, L. 1921; re-en. Sec. 3667, R.C.M. 1921; re-en. Sec. 3667, R.C.M. 1935; amd. Sec. 16, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-118; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 484, Ch. 418, L. 1995.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

Protection of fishing streams against construction and hydraulic projects, Title 87, ch. 5, part 5.

87-1-224. Destruction of beaver and beaver dams for protection of public health. (1) When a complaint is made to the department of environmental quality that beaver are obstructing the free flow of a stream flowing through a settled area and into which stream sewage of a town or city is dumped and the obstruction endangers public health, the department of environmental quality shall immediately investigate the complaint. If it finds that the work of the beaver endangers public health, it shall report the facts to the department.

(2) The department shall immediately issue a permit, free of charge, to the landowner upon whose land the beaver dams are located for the removal of the beaver, the number of which must be designated by the warden making the inspection. The landowner shall remove all beaver and beaver dams as provided by the permit within 10 days after its issuance. If the

landowner refuses to remove the beaver or the dams in the 10-day period or if the landowner does not desire to do so and so advises the department, then the department may remove the beaver by trapping or transplanting and remove their dam by blasting or other means.

(3) The department shall furnish all labor needed to blast out or otherwise remove the beaver dams. Necessary explosives must be furnished by the county in which the beaver dams are located.

History: En. 3722(A), R.C.M. 1935 by Sec. 1, Ch. 173, L. 1943; amd. Sec. 32, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-402; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 485, Ch. 418, L. 1995.

Cross-References

General power and duties of Department of Public Health and Human Services, 50-1-202.

87-1-225. Regulation of wild animals damaging property — public hunting requirements. (1) Subject to the provisions of subsection (2), a landowner is eligible for game damage assistance under subsection (3) if the landowner:

(a) allows public hunting during established hunting seasons; or

(b) does not significantly reduce public hunting through imposed restrictions.

(2) The department may provide game damage assistance when public hunting on a landowner's property has been denied because of unique or special circumstances that have rendered public hunting inappropriate.

(3) Within 48 hours after receiving a request or complaint from any landholder or person in possession and having charge of any land in the state that wild animals of the state, protected by the fish and game laws and regulations, are doing damage to the property or crops on the property, the department shall investigate and arrange to study the situation with respect to damage and depredation. The department may then decide to open a special season on the game or, if the special season method is not feasible, the department may destroy the animals causing the damage. The department may authorize and grant the holders of the property permission to kill or destroy a specified number of the animals causing the damage. A wild, ferocious animal damaging property or endangering life is not covered by this section.

History: En. Sec. 1, Ch. 60, L. 1957; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-135; amd. Sec. 1, Ch. 569, L. 1987; amd. Sec. 1, Ch. 568, L. 1989; amd. Sec. 2835, Ch. 56, L. 2009.

Cross-References

Compensation for damage caused by animal in captivity, 87-1-233.
Damage to private property, 87-1-304.
Meat donated to public entities, 87-1-512.

87-1-226. Disposition of meat of animals damaging property. (1) The meat of all animals killed or destroyed pursuant to 87-1-225 by the department or the authorized landholder shall be conserved and given to state institutions, school lunch programs, the department of public health and human services, or charitable institutions. The department shall provide transportation and distribution of the meat.

(2) Any meat not accepted by state institutions, school lunch programs, the department of public health and human services, or charitable institutions shall be sold as provided in 87-1-511.

History: En. Sec. 2, Ch. 60, L. 1957; amd. Sec. 22, Ch. 511, L. 1973; R.C.M. 1947, 26-136; amd. Sec. 1, Ch. 120, L. 1985; amd. Sec. 559, Ch. 546, L. 1995.

Cross-References

Damage to private property, 87-1-304.
Meat donated to public entities, 87-1-512.

87-1-227. Hunting rights on adjoining federal wildlife preserve. (1) The department shall negotiate for and enter into written agreements with owners, lessors, lessees, or others having control of areas, tracts, or parcels of land adjoining or contiguous to any United States federal wildlife preserve, including any wildlife refuge for migratory waterfowl in any section of Montana, for the purpose of securing equal hunting and shooting rights for all resident holders of fish and game licenses in Montana on such adjoining and contiguous lands and preventing such preserves from being surrounded by lands whereon such licensees may not enter. The department shall, further, open or cause to be opened to public hunting and shooting of migratory waterfowl on any roads, lanes, and trails not a part of the traveled portion of any federal-aid highway system within a 1-mile limit from the boundaries of any such preserve or refuge. The department shall cause any such area, tract, road, lane, or trail to be plainly posted with clear signs showing the boundaries of the areas, tracts, roads, lanes, or trails open to shooting and hunting by licensees.

(2) The department is hereby authorized to negotiate the payment of a reasonable sum to landowners, lessors, or lessees for the right of the department to create a public shooting area upon their lands. The amount that may be paid for such purpose shall rest in the discretion of the department.

History: **En. Secs. 1, 2, Ch. 224, L. 1943; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1120, 26-1121.**

Cross-References

Consent to federal acquisition of migratory bird reservations, 2-1-211.
Cooperative agreements, 87-1-303.
Posting of preserve and refuge boundaries, 87-5-402.

87-1-228. Agreement with Indians concerning hunting and fishing — Indian treaty of 1855. (1) Whereas, by treaty of July 16, 1855, between the United States of America and the confederated tribes of the Flathead, Kootenai, and Upper Pend Oreille Indians, the tribes have certain rights to fish and hunt; and whereas, it appears to be to the common advantage of the state and Indian tribes to cooperate in matters involving hunting and fishing. Therefore, the department may negotiate and conclude an agreement with the council of the Confederated Salish and Kootenai tribes of the Flathead Indian reservation for the purpose of:

(a) authorizing individuals to serve on a state-tribal cooperative board to develop hunting and fishing regulations and reimbursing those individuals' expenses pursuant to 2-18-501 through 2-18-503;

(b) doing what in its judgment is necessary by way of granting to tribal Indians state permits to hunt and fish off reservation on open and unclaimed lands, to be issued without charge to the Indians, or allowing Indians to hunt without licenses, permits, or stamps;

(c) issuing jointly with the council hunting and fishing licenses, permits, and stamps under terms established by mutual agreement and recognized as valid for hunting and fishing throughout the state. These joint licensing and permit requirements supersede the general licensing and permit requirements set forth in this title.

(d) authorizing all revenue collected from sale of joint licenses, permits, and stamps to be remitted to the council for the purpose of a fish and wildlife program;

(e) transferring to the council an amount equal to all fines and restitution collected in state court for fish and wildlife violations within reservation boundaries for use in a fish and wildlife program;

(f) policing Indian and other lands for the protection of fish and game and providing responsibility for redress of fish and game violations to state or tribal courts; and

(g) in general carrying out the purposes of this section.

(2) Any agreement entered into under subsection (1) must also satisfy the requirements of Title 18, chapter 11.

(3) Any tribal court judgment for a fish and game violation arising out of an agreement under this section is entitled to full faith and credit in the courts of Montana.

(4) Prior to concluding any agreement under this section, the department shall hold public meetings, after proper public notice of the meetings has been given and the proposed agreement has been made available for public review, to afford an opportunity to comment on the contents of the agreement.

History: **Ap. p. Preamble, Sec. 1, Ch. 198, L. 1947; Sec. 26-131, R.C.M. 1947; Ap. p. Preamble, Sec. 1, Ch. 198, L. 1947; amd. Sec. 2, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-132, R.C.M. 1947; R.C.M. 1947, 26-131, 26-132; amd. Sec. 13, Ch. 309, L. 1981; amd. Sec. 1, Ch. 590, L. 1989; amd. Sec. 1, Ch. 266, L. 1993; amd. Sec. 1, Ch. 146, L. 2005.**

87-1-229. Entry on private land — policy. It is the policy of the department to meet with and work cooperatively with individual private landowners on policies regarding entry of the department to private landowners' land and to work with public and private land managers to resolve and reduce user conflicts.

History: **En. Sec. 1, Ch. 268, L. 1995.**

Cross-References

Protection of private property — duty of wardens, 87-1-504.

87-1-230. Terminated. Sec. 8, Ch. 427, L. 2009.
History: En. Sec. 5, Ch. 427, L. 2009.

87-1-231. Repealed. Sec. 120, Ch. 258, L. 2011.
History: En. Sec. 1, Ch. 566, L. 1985.

87-1-232. Tattoo records. (1) The department shall maintain a record of each animal reported to it pursuant to 87-6-701. The record shall indicate:
(a) the person by whom the animal was captured or is held in captivity;
(b) the location of the capture or captivity;
(c) the date the animal was tattooed;
(d) the purpose of the captivity or capture; and
(e) any death, escape, release, transfer of custody, or other disposition of the animal.
(2) The department shall establish by rule a fee to be charged, which may not exceed the administrative cost of maintaining the record required by this section.
History: En. Sec. 2, Ch. 566, L. 1985; amd. Sec. 86, Ch. 258, L. 2011.

Cross-References
Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

87-1-233. Compensation for damage caused by animal held in captivity. If any bear, wolf, tiger, mountain lion, or coyote that is held in captivity or that escapes from such captivity causes any damage to the personal property of another person, compensation for such damage must be paid by the person holding or who held the animal in captivity.
History: En. Sec. 3, Ch. 566, L. 1985.

Cross-References
Regulation of wild animals damaging property, 87-1-225.

87-1-234. Exceptions to tattoo and compensation requirements. Sections 87-1-232, 87-1-233, and 87-6-701 do not apply to those animals:
(1) captured and released as part of an ongoing game management program or an ongoing predator control program unless the animals have been involved in livestock killing; or
(2) captured and released as part of a scientific, educational, or research program as certified by the department.
History: En. Sec. 4, Ch. 566, L. 1985; amd. Sec. 87, Ch. 258, L. 2011.

Cross-References
Taking fish or game for scientific purposes, 87-2-806.

87-1-235 through 87-1-240 reserved.

87-1-241. Acquisition of wildlife habitat — rules. (1) Before acquisition of any interest in land for the primary purpose of securing wildlife habitat the commission shall by rule establish a policy for making such acquisitions. With regard to any specific acquisition the policy shall provide for a comprehensive analysis of:
(a) the wildlife populations and use currently associated with the property;
(b) the potential value of the land for protection, preservation, and propagation of wildlife;
(c) management goals proposed for the land and wildlife populations, and where feasible, any additional uses of the land such as livestock grazing or timber harvest;
(d) any potential impacts to adjacent private land resulting from proposed management goals, and plans to address such impacts;
(e) any significant potential social and economic impacts to affected local governments and the state, including but not limited to impacts on:
(i) tax revenue available for the operation of taxing jurisdictions within the county;
(ii) services required to be provided by local governments;
(iii) employment opportunities within the counties;
(iv) local schools; and
(v) private businesses supplying goods and services to the community;
(f) a land maintenance program to control weeds and maintain roads and fences; and
(g) any other matter considered necessary or appropriate by the commission.

(2) The analysis made of any proposed acquisition must be made available for review by each owner of land adjacent to the property that is the subject of analysis, and to any member of the public. A public hearing must be held in the affected area after the analysis has been made available to the public.

History: En. Sec. 1, Ch. 598, L. 1987; amd. Sec. 1, Ch. 515, L. 1989.

Cross-References

State lands sales, Title 77, ch. 1, parts 1 and 2.
Acquisition and sale of lands or waters, 87-1-209.
Commission approval of acquisitions, exchanges, or sales, 87-1-301.
Acquisition or exchange of lands, 87-1-301, 87-1-701, 87-1-703, 87-1-709, 87-1-711, 87-1-713.
Acquisition or exchange of waters, 87-1-301, 87-1-713, 87-1-714.
Rules for use of lands and waters, 87-1-303.

87-1-242. Funding for wildlife habitat. (1) The amount of money specified in this subsection from the sale of each hunting license or permit listed must be used exclusively by the commission to secure, develop, and maintain wildlife habitat, subject to appropriation by the legislature:

(a) Class B-10, nonresident combination, $77;
(b) Nonresident antelope, $20;
(c) Nonresident moose, $20;
(d) Nonresident mountain goat, $20;
(e) Nonresident mountain sheep, $20;
(f) Class D-1, nonresident mountain lion, $20;
(g) Nonresident black bear, $20;
(h) Nonresident wild turkey, $10;
(i) Class AAA, combination sports, $7;
(j) Class B-11 nonresident deer combination, $200.

(2) Twenty percent of any increase in the fee for the Class B-7 license or any license or permit listed in subsection (1) must be allocated for use as provided in subsection (1).

(3) Eighty percent of the money allocated by this section, together with the interest and income from the money, must be used to secure wildlife habitat pursuant to 87-1-209.

(4) Twenty percent of the money allocated by this section must be used as follows:

(a) up to 50% a year may be used for development and maintenance of real property used for wildlife habitat; and

(b) the remainder and any money not allocated for development and maintenance under subsection (4)(a) by the end of each odd-numbered fiscal year must be credited to the account created by 87-1-601(5) for use in the manner prescribed for the development and maintenance of real property used for wildlife habitat.

History: En. Sec. 2, Ch. 598, L. 1987; amd. Sec. 11, Ch. 598, L. 1987; amd. Sec. 11, Ch. 636, L. 1987; amd. Sec. 1, Ch. 319, L. 1991; amd. Sec. 5, Ch. 459, L. 1995; amd. Sec. 80, Ch. 7, L. 2001; amd. Sec. 1, I.M. No. 161, approved Nov. 2, 2010; amd. Sec. 52, I.M. No. 190, approved Nov. 3, 2020.

87-1-243 through 87-1-245 reserved.

87-1-246. *(Temporary)* **Funding of upland game bird enhancement program.** The amount of money specified in this section from the sale of each hunting license listed must be used exclusively by the department to preserve and enhance upland game bird populations in Montana in accordance with 87-1-246 through 87-1-249, subject to appropriation by the legislature:

(1) Class A-1, resident upland game bird, $2;
(2) Class B-1, nonresident upland game bird, $23;
(3) Class B-2, 3-day nonresident upland game bird, $10;
(4) Class AAA, combination sports, $2; and
(5) Class B-10, nonresident big game combination, $23.

87-1-246. *(Effective March 1, 2026)* **Funding of upland game bird enhancement program.** The amount of money specified in this section from the sale of each hunting license listed, excluding discounted licenses sold under 87-2-514, 87-2-522, 87-2-525, 87-2-526, 87-2-801, 87-2-803, and 87-2-805(1) and (2), must be used exclusively by the department to preserve and enhance upland game bird populations in Montana in accordance with 87-1-246 through 87-1-249, subject to appropriation by the legislature:

(1) Class A-1, resident upland game bird, $4.50;
(2) Class B-1, nonresident upland game bird, $40;
(3) Class B-2, 3-day nonresident upland game bird, $20;
(4) Class AAA, combination sports, $4.50; and
(5) Class B-10, nonresident big game combination, $40.

History: En. Sec. 1, Ch. 636, L. 1987; amd. Sec. 11, Ch. 636, L. 1987; amd. Sec. 1, Ch. 232, L. 1989; amd. Sec. 81, Ch. 7, L. 2001; amd. Sec. 2, Ch. 204, L. 2013; amd. Sec. 1, Ch. 676, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 676, L. 2025. Amendment effective March 1, 2026.

87-1-247. Upland game bird enhancement program — authorized use of funds. (1) Subject to subsection (2), revenue dedicated to the upland game bird enhancement program pursuant to 87-1-246 must be used by the department to:

(a) prepare and disseminate information to landowners and organizations concerning the upland game bird enhancement program;

(b) review potential upland game bird release sites;

(c) assist applicants in preparing management plans for project areas;

(d) evaluate the upland game bird enhancement program;

(e) develop a strategic plan pursuant to 87-1-251(2)(a);

(f) develop, enhance, and conserve upland game bird habitat in Montana; and

(g) establish and assist an upland game bird citizens' advisory council pursuant to 87-1-251.

(2) As far as practicable, expenditures made pursuant to subsection (1) must be prioritized by administrative region based on need, taking into consideration any biological, recreational, or economic benefit and the objectives established in a strategic plan developed pursuant to 87-1-251(2)(a).

History: En. Sec. 2, Ch. 636, L. 1987; amd. Sec. 2, Ch. 232, L. 1989; amd. Sec. 1, Ch. 365, L. 2001; amd. Sec. 1, Ch. 306, L. 2009; amd. Sec. 1, Ch. 121, L. 2023.

87-1-248. Qualification of upland game bird enhancement projects. (1) A project eligible for funding under the upland game bird release program must contain the proper combination of winter cover, food, nesting cover, and other upland game bird habitat components determined necessary to provide for establishment of a viable upland game bird population.

(2) A project eligible for funding under the habitat enhancement program must include assistance to applicants in the establishment of suitable nesting cover, winter cover, or feeding areas through cost sharing, leases, or conservation easements.

(3) A project containing hunting preserves or any commercial hunting enterprise or in which hunting rights are leased or paid for is not eligible for funding.

(4) Preference must be given for project applications submitted by youth organizations, 4-H clubs, sports groups, and other associations of sufficient size to guarantee completion of all project requirements. However, individual landowners may also apply, as long as the land in the project area remains open to public hunting in accordance with reasonable use limitations imposed by the landowner.

(5) (a) Except when a greater amount, up to $200,000, is authorized by the commission, a project may not receive more than $100,000 in funds collected under 87-1-246.

(b) Total purchases of equipment, land, and buildings under the habitat enhancement program may not exceed $25,000 for each project.

(c) The construction of wells, pipelines, or roads using funds collected under 87-1-246 is only allowed on a cost-share basis, when the applicant pays at least 50% of the funded costs.

(d) Any equipment purchased with funds collected under 87-1-246 remains the property of the department.

(e) A shelterbelt may not be constructed within 400 feet of any residential building or building occupied by livestock.

(f) Funds collected under 87-1-246 may be expended for supplemental feeding programs that are authorized by the department.

History: En. Sec. 3, Ch. 636, L. 1987; amd. Sec. 3, Ch. 232, L. 1989; amd. Sec. 2, Ch. 365, L. 2001.

87-1-249. Rules. (1) The department shall adopt rules for the administration of the upland game bird enhancement program created in 87-1-246 through 87-1-249.

(2) The rules must:

(a) provide for eligibility criteria for project applications, including project evaluation criteria that incorporate the following factors:

(i) proposed project acreage of suitable size;

(ii) proposed project acreage and adjoining lands that are suitable for upland game bird habitat;

(iii) evidence that existing and potential species will benefit from the project;

(iv) the number of acres that will be open to and suitable for public bird hunting under the proposal; and

(v) in addition to the criteria in subsections (2)(a)(i) through (2)(a)(iv), preference to proposed projects with:

(A) longer contract length and larger landowner cost share;

(B) lands with special or unique components, such as wetlands; and

(C) a landowner history of providing hunter access and habitat enhancement;

(b) be consistent with general requirements of the federal conservation reserve program, the agricultural conservation program, and hunting access programs established pursuant to 87-1-265 so that landowners who participate in those programs may also be eligible for participation in the upland game bird enhancement program;

(c) specifically indicate specifications under which upland game birds will be released in project areas, including but not limited to:

(i) habitat requirements;

(ii) number of upland game birds to be released;

(iii) health requirements;

(iv) banding requirements;

(v) time for release;

(vi) age of birds to be released; and

(vii) reimbursement amount for each bird released;

(d) establish application procedures for project funding and review and for approval or denial of applications; and

(e) establish project monitoring and reporting procedures, including a requirement that payments for projects authorized pursuant to 87-1-247 be supported by contracts, invoices, receipts, or other supporting documentation.

History: En. Sec. 4, Ch. 636, L. 1987; amd. Sec. 4, Ch. 232, L. 1989; amd. Sec. 3, Ch. 365, L. 2001; amd. Sec. 2, Ch. 63, L. 2019.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

87-1-250. Upland game bird enhancement program — report. The department shall report to each regular session of the legislature, in accordance with 5-11-210, concerning upland game bird enhancement activities undertaken pursuant to 87-1-246 through 87-1-249 and 87-1-251 during the preceding biennium, including providing:

(1) copies of reports made to the upland game bird citizens' advisory council pursuant to 87-1-251(2)(b); and

(2) any recommendations concerning the operation of the program.

History: En. Sec. 9, Ch. 636, L. 1987; amd. Sec. 5, Ch. 232, L. 1989; amd. Sec. 2, Ch. 306, L. 2009; amd. Sec. 125, Ch. 261, L. 2021.

87-1-251. Upland game bird enhancement program — advisory council. (1) There is an upland game bird citizens' advisory council consisting of 12 members appointed by the director and serving staggered 4-year terms. The 12 members must include a public member representing each of the department's administrative regions. Council membership must include:

(a) an upland game bird hunter;

(b) a local chamber of commerce representative;

(c) a conservationist;

(d) an upland game bird biologist;

(e) at least two landowners, one of whom must be enrolled in the block management program; and

(f) a senator and a representative from different political parties.

(2) The council shall meet at least once each year but not more than once each month as necessary to:

(a) advise the department on the development and maintenance of a 10-year strategic plan that at a minimum:

(i) defines quantifiable goals, objectives, and performance measurements for the upland game bird enhancement program based on need by administrative region, taking into consideration any biological, recreational, or economic benefit, including the prioritization of at-risk upland game bird species and their associated habitats;

(ii) establishes regional and statewide priorities for the development of upland game bird habitat based on land management needs, sustaining upland game bird populations, and landowner input;

(iii) prioritizes resource allocation, including funding and personnel, in accordance with objectives and goals established pursuant to this subsection (2)(a);

(iv) promotes landowner outreach and relations with both private and public landowners;

(v) provides for the ongoing monitoring of, access to, and signage for upland game bird enhancement projects, as well as the renewal or replacement of expiring projects; and

(vi) develops strategies to ensure the effective release of upland game birds and use of funding for upland game bird releases; and

(b) provide ongoing monitoring of upland game bird enhancement program activities, including but not limited to receipt from the department of an annual:

(i) activity report to evaluate whether objectives, goals, and performance measurements established pursuant to subsection (2)(a) are being met or are expected to be met;

(ii) financial report, providing a summary of revenue and expenditures for the upland game bird enhancement program and any unreserved balance remaining at the end of the fiscal year from fees collected pursuant to 87-1-246; and

(iii) report reviewing whether upland game bird enhancement project contracts are in compliance with 87-1-248 and rules adopted pursuant to 87-1-249.

(3) The council may recommend rules for adoption by the department.

(4) Each member of the council is entitled to receive compensation as provided in 2-15-122 and travel expenses as provided in 2-18-501 through 2-18-503 for each day spent on official council business. Council members who conduct official council business in their city of residence are entitled to receive a midday meal allowance as provided in 2-18-502.

(5) The department shall provide administrative support as necessary to assist the advisory council in its duties pursuant to this section.

History: En. Sec. 3, Ch. 306, L. 2009; amd. Sec. 8, Ch. 603, L. 2023.

87-1-252 through 87-1-254 reserved.

87-1-255. Purpose. The legislature finds that the conservation of rivers and their fisheries is of vital social and economic importance to Montana. The legislature further finds that some of our state's rivers and fisheries are diminished in value by water pollution, water shortages, and riparian erosion and that there is a need for a program to promote the beneficial use and productivity of our river systems. The legislature further finds that establishment of a river restoration program, funded by anglers from across the state and nation, is a sound and proper method to help ensure that the rivers and fisheries that anglers and others have treasured for Montana's first 100 years will continue to serve the state and its people.

History: En. Sec. 1, Ch. 601, L. 1989.

Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.
Water resources, Title 85, ch. 1.

87-1-256. Definitions. As used in 87-1-255 through 87-1-259, the following definitions apply:

(1) "Account" means the river restoration account provided for in 87-1-258.

(2) "Associated lands" means the beds, banks, and immediately adjacent lands associated with a river.

(3) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(4) "Program" means the river restoration program provided for in 87-1-257.

(5) "Restoration" means to restore to a good condition, regenerate, or make over in an improved form.

(6) "River" means a river, stream, creek, or other naturally occurring body of flowing water.

History: **En. Sec. 2, Ch. 601, L. 1989.**

87-1-257. River restoration program. (1) The department shall administer a river restoration program.

(2) The program may consist of physical projects to improve rivers and their associated lands in order to conserve and enhance fish and wildlife habitat, including but not limited to a change in appropriation right or leasing of water rights under 85-2-436.

(3) The department shall work cooperatively with individuals, conservation districts, and state, local, private, tribal, and federal organizations to achieve the goals of the program and may contract with private organizations to implement specific river restoration projects.

(4) The department shall present projects to the local conservation district for review and recommendations and obtain any applicable permits.

(5) The department shall receive the consent of the landowner or lessee of any associated lands before initiating physical projects on these lands.

(6) A project conducted under the program may not restrict or interfere with the exercise of any water right.

History: **En. Sec. 3, Ch. 601, L. 1989; amd. Sec. 3, Ch. 175, L. 1993; amd. Sec. 7, Ch. 448, L. 2007.**

Cross-References

Navigable waters, 23-2-301, 85-1-112.
Owner of land bounded by water, 70-16-201.
Adjudication of water rights, Title 85, ch. 2, part 2.
Future fisheries improvement program, 87-1-272, 87-1-273.
Navigable waters subject to fishing rights, 87-2-305.

87-1-258. River restoration account. (1) There is a river restoration special revenue account administered by the department within the state special revenue fund established in 17-2-102.

(2) There must be deposited in the account:

(a) all proceeds earmarked for this account under 87-2-301, 87-2-302, and 87-2-711; and

(b) money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of this account.

(3) The department may spend funds in the account only to carry out the program provided for in 87-1-257.

History: **En. Sec. 4, Ch. 601, L. 1989.**

87-1-259. Funding for river restoration account. The amount of money specified in this section from the sale of each of the following licenses must be deposited in the account provided for in 87-1-258:

(1) Class A—resident fishing license, 50 cents;

(2) Class B—nonresident fishing license, $1; and

(3) Class AAA—combination sports license, 50 cents.

History: **En. Sec. 5, Ch. 601, L. 1989; amd. Sec. 5, Ch. 263, L. 1995.**

87-1-260 and 87-1-261 reserved.

87-1-262. Montana block management enforcement network — rulemaking. (1) The Montana block management enforcement network is intended to establish a framework for assisting landowners enrolled in the block management program established under 87-1-265 with enforcing compliance by hunters with the landowner's rules and Montana law.

(2) Landowners enrolled in the block management program may opt-in to the Montana block management enforcement network.

(3) By electing to opt-in to the Montana block management enforcement network, a landowner does not waive any right to deny access to any property enrolled in the block

management program for cause. Additionally, a landowner may opt-out of the Montana block management enforcement network at any time and may allow an individual who is subject to the restrictions of subsection (4) to access the landowner's property.

(4) Individuals accessing lands enrolled in the Montana block management enforcement network shall adhere to all rules governing access to the block management property. Any conviction based on a violation of those rules or any provision of Titles 45 or 87 by an individual while accessing lands enrolled in the block management program must result in the following:

(a) for a first conviction, the individual shall be prohibited from accessing all lands participating in the Montana block management enforcement network for the remainder of the current license year;

(b) for a second conviction, the individual shall be prohibited from accessing all lands participating in the Montana block management enforcement network for up to 3 consecutive license years; and

(c) for a third conviction, the individual shall be prohibited from accessing all lands participating in the Montana block management enforcement network for life.

(5) The department shall provide educational information to individuals accessing private property under the block management program regarding the requirement to adhere to all rules governing access to those private lands and the consequences for violating those rules on private property enrolled in the Montana block management enforcement network.

(6) The commission may adopt rules to implement the provisions of this section.

History: En. Sec. 1, Ch. 402, L. 2025.

Compiler's Comments

Effective Date: This section is effective October 1, 2025.

87-1-263. Veterans' preference for reserving certain block management areas on Veterans' Day. (1) Subject to the provisions of subsections (2) and (3), on Veterans' Day, veterans may be given preference to use block management areas that require a reservation.

(2) A reservation by a veteran to use a block management area pursuant to subsection (1) must be made at least 1 week in advance of Veterans' Day and in accordance with the existing reservation system for that area.

(3) A person who makes a reservation pursuant to this section shall carry proof of the person's veteran status, such as a DD form 214, U.S. department of veterans affairs identification card, or a driver's license indicating the person's veteran status, while hunting on the block management area for which the reservation was made. The person also shall make proof of the person's veteran status available for review by an employee or authorized officer of the department upon request.

(4) The department shall conduct random verification of the veteran status of persons making reservations pursuant to this section.

(5) The department may adopt rules to implement the provisions of this section.

History: En. Sec. 1, Ch. 188, L. 2017.

87-1-264. Expenditure of hunting access program funds on weed control. The legislature recognizes that the hunting access programs authorized in 87-1-265 successfully encourage landowners to increase public access to private and public lands for purposes of hunting, but that increased public access may also contribute to an increase in the spread of noxious weeds on public and private lands. Therefore, in an effort to improve management and services related to those programs, the department may offer up to 5% in additional incentive payments above the maximum annual payment established in 87-1-265 to landowners who agree to use those additional payments for specific weed management activities on lands under their control.

History: En. Sec. 26, Ch. 407, L. 2001; amd. Sec. 3, Ch. 63, L. 2019.

87-1-265. Hunting access programs — block management program — private landowner assistance — rules — restriction on landowner liability. (1) There is established a block management program administered by the department to provide landowner assistance that encourages public access to private and public lands for hunting purposes.

(2) The department may also develop and administer alternative programs to the block management program that are designed to promote public access to private and public lands for hunting purposes.

(3) Participation in a hunting access program established under this section is voluntary. A lease, acquisition, or other arrangement for public access to or across private property for hunting purposes must be negotiated through a cooperative agreement between the landowner and the department that will guarantee reasonable access for public hunting. Landowners may also form a voluntary association when development of a unified cooperative agreement is advantageous. A cooperative agreement must contain a detailed description of the conditions for use of the private property, including but not limited to:

(a) hunting access management;

(b) services to be provided to the public;

(c) ranch rules and other restrictions; and

(d) any other management information to be gathered, which must be made available to the public.

(4) Private land is not eligible for inclusion in a hunting access program if outfitting, commercial hunting, or fees charged for private hunting access unreasonably restrict public hunting opportunities.

(5) If the department determines that an agreement may adversely influence game management decisions or wildlife habitat on public lands, then other public land agencies, interested sportspersons, and affected landowners must be consulted. An affected landowner's management goals and personal observations regarding game populations and habitat use must be considered in development of the agreement.

(6) The commission may adopt rules to implement the provisions of this section, including but not limited to rules that determine tangible benefits to be provided to a landowner who participates in a hunting access program. Benefits are intended to offset potential impacts associated with public hunting access, including but not limited to those associated with general ranch maintenance, conservation efforts, weed control, fire protection, liability insurance, roads, fences, and parking area maintenance. Factors used in determining benefits may include but are not limited to:

(a) the number of days of public hunting provided by a participating landowner;

(b) wildlife habitat provided;

(c) resident game populations;

(d) number, sex, and species of animals taken; and

(e) access provided to adjacent public lands.

(7) For a proposed agreement that only provides access to adjacent public lands for hunting purposes, the department shall:

(a) notify adjacent public land leaseholders;

(b) ensure the proposed agreement does not violate or interfere with the terms of any adjacent public land lease agreement;

(c) incorporate the relevant terms of an adjacent public land lease agreement into the proposed access agreement; and

(d) allow an adjacent public land leaseholder the opportunity to support or object to the proposed access agreement.

(8) In considering a proposed agreement that only provides access to adjacent public lands for hunting purposes, the commission may:

(a) consider an adjacent leaseholder's support for or objection to a proposed access agreement;

(b) exempt the access agreement from tracking the number of days of public hunting access provided by a participating landowner;

(c) agree to a payment to the landowner that is a flat fee rate and not based on the number of days of public hunting access provided by a participating landowner;

(d) use the amount and opportunity provided by public lands access as factors to determine benefits; and

(e) otherwise implement simplified rules.

(9) (a) Benefits earned by a landowner who participates in a hunting access program may include but are not limited to those applied in the manner described in subsections (9)(b) and (9)(c).

(b) A landowner may receive direct payments:

(i) for weed control or may direct payments to be made directly to the county weed control board;

(ii) for fire protection or may direct fire protection payments to be made to the local fire district or the county where the landowner resides; and

(iii) to offset insurance costs incurred for allowing public hunting access.

(c) The department may provide assistance in the construction and maintenance of roads, gates, and parking facilities and in the signing of property.

(10) (a) Except as provided in 87-1-264 and subsection (10)(b) of this section, payments to a landowner who participates in a hunting access program through an annual agreement may not exceed $50,000 a year, and $25,000 a year for agreements that only provide access to public land for hunting purposes.

(b) Each landowner who participates in a unified cooperative agreement pursuant to subsection (3) may be eligible for payments not to exceed $50,000 a year, and $25,000 a year for agreements that only provide access to public land for hunting purposes.

(11) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in a hunting access program.

History: En. Sec. 1, Ch. 459, L. 1995; amd. Sec. 1, Ch. 216, L. 2001; amd. Sec. 4, Ch. 63, L. 2019; amd. Sec. 2, Ch. 552, L. 2021; amd. Sec. 1, Ch. 230, L. 2023; amd. Sec. 1, Ch. 527, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 527, L. 2025. Amendment effective October 1, 2025.

Cross-References

Entry on private land — policy, 87-1-229.

87-1-266. *(Temporary)* **License benefits for landowners enrolled in block management program — rulemaking.** (1) As a benefit for enrolling property in the block management program established in 87-1-265, a resident landowner may receive one conservation license and one Class AAA combination sports license and the necessary prerequisites, without charge, if the landowner is the owner of record. The licenses may be used for the full hunting or fishing season in any district where they are valid. The licenses may not be transferred by gift or sale.

(2) As a benefit for enrolling property in the block management program, a nonresident landowner may receive one conservation license and one Class B-10 nonresident big game combination license and the necessary prerequisites, without charge, if the landowner is the owner of record. The licenses may be used for the full hunting or fishing season in any district where they are valid. The licenses may not be transferred by gift or sale. The grant of a license under this subsection also qualifies the licensee to apply for a permit through the normal drawing process. The grant of a license under this subsection does not affect the limits established under 87-2-505.

(3) (a) Instead of receiving the benefits provided in subsection (1) or (2), a landowner of record who enrolls in the block management program may designate an immediate family member or employee to receive, without charge, a conservation license and the necessary prerequisites and:

(i) a Class AAA combination sports license if the designated person is a resident; or

(ii) a Class B-10 nonresident big game combination license if the designated person is a nonresident.

(b) For purposes of this subsection (3), an immediate family member means a parent, grandparent, child, or grandchild of the cooperator by blood or marriage, a spouse, a legally adopted child, a sibling of the cooperator or spouse, or a niece or nephew.

(c) For purposes of this subsection (3), the term "employee" means a person who works full time and year-round for the landowner as part of the active farm or ranch operation enrolled in the block management program.

(d) An immediate family member or employee who is designated to receive a license pursuant to this subsection (3) must be eligible for licensure under current Montana law and may not transfer the license by gift or sale.

(e) The grant of a Class B-10 nonresident big game combination license to an immediate family member or employee pursuant to this subsection (3) does not affect the limits established in 87-2-505.

(4) The department may by rule limit the overall number of licenses that can be provided to landowners pursuant to this section.

(5) For the purposes of this section, the term "necessary prerequisites" includes:

(a) the base hunting license established in 87-2-116;

(b) the aquatic invasive species prevention pass established in 87-2-130; and

(c) the conservation license established in 87-2-201.

87-1-266. *(Effective March 1, 2026)* **License benefits for landowners enrolled in block management program — rulemaking.** (1) As a benefit for enrolling property in the block management program established in 87-1-265, a resident landowner may receive one conservation license and one Class AAA combination sports license and the necessary prerequisites, without charge, if the landowner is the owner of record. The licenses may be used for the full hunting or fishing season in any district where they are valid. The licenses may not be transferred by gift or sale.

(2) As a benefit for enrolling property in the block management program, a nonresident landowner may receive one conservation license and one Class B-10 nonresident big game combination license and the necessary prerequisites, without charge, if the landowner is the owner of record. The licenses may be used for the full hunting or fishing season in any district where they are valid. The licenses may not be transferred by gift or sale. The grant of a license under this subsection also qualifies the licensee to apply for a permit through the normal drawing process. The grant of a license under this subsection does not affect the limits established under 87-2-505.

(3) (a) Instead of receiving the benefits provided in subsection (1) or (2), a landowner of record who enrolls in the block management program may designate an immediate family member, an employee, or a person with a developmental disability or a physical disability as determined by the department to receive, without charge, a conservation license and the necessary prerequisites and:

(i) a Class AAA combination sports license if the designated person is a resident; or

(ii) a Class B-10 nonresident big game combination license if the designated person is a nonresident.

(b) For the purposes of this subsection (3), the following definitions apply:

(i) "Developmental disability" means a developmental disability as defined in 53-20-102.

(ii) "Employee" means a person who works full-time and year-round for the landowner as part of the active farm or ranch operation enrolled in the block management program.

(iii) "Immediate family member" means a parent, grandparent, child, or grandchild of the cooperator by blood or marriage, a spouse, a legally adopted child, a sibling of the cooperator or spouse, or a niece or nephew.

(iv) "Physical disability" means a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person's functional ability.

(c) A person who is designated to receive a license pursuant to this subsection (3) must be eligible for licensure under current Montana law and may not transfer the license by gift or sale.

(d) The grant of a Class B-10 nonresident big game combination license to an immediate family member, an employee, or a person with a developmental disability or a physical disability as determined by the department pursuant to this subsection (3) does not affect the limits established in 87-2-505.

(4) The department may by rule limit the overall number of licenses that can be provided to landowners pursuant to this section.

(5) For the purposes of this section, the term "necessary prerequisites" includes:

(a) the base hunting license established in 87-2-116;

(b) the aquatic invasive species prevention pass established in 87-2-130; and

(c) the conservation license established in 87-2-201.

History: En. Sec. 2, Ch. 459, L. 1995; amd. Sec. 2, Ch. 471, L. 2005; amd. Sec. 1, Ch. 114, L. 2009; amd. Sec. 2, I.M. No. 161, approved Nov. 2, 2010; amd. Sec. 1, Ch. 19, L. 2019; amd. Sec. 5, Ch. 63, L. 2019; amd. Sec. 3, Ch. 221, L. 2019; amd. Sec. 10, Ch. 507, L. 2023; amd. Sec. 1, Ch. 359, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 359, L. 2025. Amendment effective March 1, 2026.

87-1-267. Repealed. Sec. 12, Ch. 63, L. 2019.

History: En. Sec. 3, Ch. 459, L. 1995; amd. Sec. 2, Ch. 216, L. 2001; amd. Sec. 3, Ch. 471, L. 2005; amd. Sec. 1, Ch. 211, L. 2017.

87-1-268. Repealed. Sec. 10, I.M. No. 161, Nov. 2, 2010.

History: En. Sec. 6, Ch. 459, L. 1995.

87-1-269. Private land/public wildlife advisory committee — duties — reports. (1) There is a private land/public wildlife advisory committee composed of persons interested in issues related to hunters, anglers, landowners, and outfitters, including but not limited to hunting access programs established pursuant to 87-1-265, the fishing access enhancement program, landowner-hunter relations, outfitting industry issues, public access land agreements, and other issues related to private lands and public wildlife. The committee must have broad representation of landowners, outfitters, and sportspersons. The department may provide administrative assistance as necessary to assist the private land/public wildlife advisory committee.

(2) The governor shall appoint the members of the private land/public wildlife advisory committee.

(3) (a) The private land/public wildlife advisory committee shall report to the governor and to each regular session of the legislature, in accordance with 5-11-210, regarding the success of various elements of the hunting access programs, including a report of annual landowner participation, the number of acres annually enrolled in the programs, hunter harvest success on enrolled lands, the number of qualified applicants who were denied enrollment because of a shortfall in funding, and an accounting of program expenditures, and make recommendations for funding, modification, or improvement needed to achieve the objectives of the programs. The department shall provide fiscal analyses of all hunting access program funding sources to the review committee for review and recommendations.

(b) The private land/public wildlife advisory committee shall report to the governor and to each regular session of the legislature, in accordance with 5-11-210, regarding the success of the fishing access enhancement program and make recommendations for funding, modification, or improvement needed to achieve the objectives of the program. The department shall provide fiscal analyses of all fishing access enhancement program funding sources to the review committee for review and recommendations.

(4) The private land/public wildlife advisory committee shall review public access land agreement proposals pursuant to 87-1-295 and recommend to the department whether to grant public access land agreements.

(5) The director may appoint additional advisory committees that are considered necessary to assist in the implementation of the hunting access programs, public access land agreements, and the fishing access enhancement program and to advise the commission regarding the development of rules implementing the hunting access programs, public access land agreements, and the fishing access enhancement program.

History: En. Sec. 7, Ch. 459, L. 1995; amd. Sec. 2, Ch. 544, L. 1999; amd. Sec. 3, Ch. 196, L. 2001; amd. Sec. 1, Ch. 48, L. 2005; amd. Sec. 1, Ch. 235, L. 2005; amd. Sec. 4, Ch. 471, L. 2005; amd. Sec. 6, Ch. 63, L. 2019; amd. Sec. 4, Ch. 296, L. 2019; amd. Sec. 126, Ch. 261, L. 2021.

87-1-270. Allocation of license fees to hunting access programs. (1) Except as provided in 87-2-514 and 87-2-805(3), the department shall use $55 from the sale of each Class B-1 nonresident upland game bird license and $25 from the sale of each Class B-2 3-day nonresident upland game bird license to encourage public access to private lands for hunting purposes in accordance with 87-1-265.

(2) The department shall use the hunting access fees collected pursuant to 87-2-116 to encourage public access to private and public lands for hunting purposes in accordance with 87-1-265.

History: **En. Sec. 5, Ch. 544, L. 1999; amd. Sec. 3, Ch. 216, L. 2001; amd. Sec. 1, Ch. 304, L. 2009; amd. Sec. 3, Ch. 204, L. 2013; amd. Sec. 4, Ch. 449, L. 2015; amd. Sec. 7, Ch. 63, L. 2019.**

87-1-271. Annual lottery of hunting licenses — proceeds dedicated to hunting access. (1) The commission may issue through a lottery one license each year for each of the following:

(a) deer;
(b) elk;
(c) shiras moose;
(d) mountain sheep;
(e) mountain goat;
(f) wild buffalo or bison;
(g) antelope; and
(h) mountain lion.

(2) The restriction in 87-2-702(4) that a person who receives a moose, mountain goat, or mountain sheep special license is not eligible to receive another license for that species for the next 7 years does not apply to a person who receives a license through a lottery conducted pursuant to this section.

(3) The commission shall establish rules regarding:
(a) the conduct of the lottery authorized in this section;
(b) the use of licenses issued through the lottery; and
(c) the price of lottery tickets.

(4) Except as provided in 87-2-903, all proceeds from a lottery conducted pursuant to this section must be used by the department for hunting access programs and law enforcement.

History: **En. Sec. 1, Ch. 471, L. 2005; amd. Sec. 1, Ch. 63, L. 2007; amd. Sec. 1, Ch. 298, L. 2011; amd. Sec. 8, Ch. 63, L. 2019.**

87-1-272. Future fisheries improvement program — funding priority — reports required. (1) In order to enhance future fisheries through natural reproduction, the department shall establish and implement a statewide voluntary program that promotes fishery habitats and spawning areas for the rivers, streams, and lakes of Montana's fisheries.

(2) When projects are suggested by the future fisheries review panel, the department shall, through a public hearing process and with the approval of the commission, prioritize projects that have been recommended by the review panel to be funded. Emphasis must be given to projects that enhance the historic habitat of native fish species. The department shall fund and implement the program regarding the long-term enhancement of streams and streambanks, instream flows, water leasing, lease or purchase of stored water, and other voluntary programs that deal with wild fish and aquatic habitats. A project conducted under the future fisheries improvement program may not restrict or interfere with the exercise of any water rights or property rights of the owners of streambeds and property adjacent to streambeds, streambanks, and lakes. The fact that a program project has been completed on private property does not create any right of public access to the private property unless that right is granted voluntarily by the property owner.

(3) The department shall work in cooperation with private landowners, conservation districts, irrigation districts, local officials, anglers, and other citizens to implement the future fisheries improvement program. Any department employee who is employed under this section to facilitate contact with landowners must have experience in commercial or irrigated agriculture. The department shall encourage the use of volunteer labor and grants, matching grants, and private donations to accomplish program purposes. The department may use contracted services:

(a) for negotiations with landowners, local officials, citizens, and others;
(b) for coordination with other agencies that may be involved in projects conducted under this section; and
(c) to perform and supervise project work.

(4) Funds expended under this section may be used only for projects for the protection of the fisheries resource that have been identified by the review panel established in 87-1-273 and approved by the commission and may not be used for the acquisition of any interest in land.

(5) (a) The department shall report to the commission on the progress of the future fisheries improvement program every 12 months and post a copy of the report on a state digital access system to ensure public access to the report.

(b) The department shall also present a detailed report to the legislature in accordance with 5-11-210 on the progress of the future fisheries improvement program. The legislative report must include the department's program activities and expenses since the last report and the project schedules and anticipated expenses for the ensuing 10 years' implementation of the future fisheries improvement program.

(c) In order to implement 87-1-273 and this section, the department may expend revenue from the future fisheries improvement program for up to two additional full-time employees.

History: En. Sec. 1, Ch. 463, L. 1995; amd. Sec. 5, Ch. 440, L. 1997; amd. Sec. 1, Ch. 183, L. 2007; amd. Sec. 118, Ch. 2, L. 2009; amd. Sec. 127, Ch. 261, L. 2021; amd. Sec. 30, Ch. 365, L. 2023.

87-1-273. Future fisheries review panel — purpose — appointment and duties. (1) The governor or governor's designee shall call for nominees for, accept and review recommendations for, and appoint a future fisheries review panel. The panel must consist of at least 13 members, including but not limited to:

(a) one member who is a representative of conservation districts;
(b) one member with expertise in commercial agriculture;
(c) one member with expertise in irrigated agriculture;
(d) one member from the private sector who is a fisheries restoration professional;
(e) two members who are licensed Montana anglers;
(f) one member of the house of representatives, chosen by the speaker of the house;
(g) one member of the senate, chosen by the committee on committees;
(h) one member with expertise in silviculture;
(i) one member who is a Montana high school student;
(j) one member with expertise in mining reclamation techniques;
(k) one member with expertise in fisheries; and
(l) one ex officio member from the Montana department of transportation who has experience in highway impacts mitigation.

(2) A member appointed to the review panel shall serve a 2-year term and may be reappointed.

(3) The purpose of the review panel is to:

(a) review, at least every 6 months, proposed projects that have been submitted by public or private entities for funding;

(b) determine what projects are eligible for inclusion in the future fisheries improvement program;

(c) approve or reject proposed projects; and

(d) forward a list of approved projects to the department.

(4) To be eligible for funding, a project must be generated at the local level and must be developed and presented to the review panel by the department, local landowners, conservation districts, or other interested citizens. Before consideration of any project that involves streambed or streambank restoration, a change in the use of water, or any other purpose that affects a particular property owner's interest in land or water, the review panel is required to find that the project is being proposed for funding with the voluntary approval of the participating property owner.

History: En. Sec. 2, Ch. 463, L. 1995; amd. Sec. 4, Ch. 529, L. 1999.

87-1-274. Emergency instream flows — funding. (1) The legislature recognizes the propriety of establishing voluntary leases or other authorized water augmentation measures for instream flows so that mechanisms will be in place to maintain streamflows sufficient for fisheries and aquatic resources during emergency low-flow conditions.

(2) Funding for voluntary leases and other water augmentation measures authorized under subsection (1) may come from any uncommitted funds allocated to the state under the U.S. fish and wildlife service state wildlife grant program or other available federal funds,

matched by the department with up to $500,000 from the future fisheries improvement program provided for in 87-1-272, from the native Montana fish species enhancement program provided for in 87-1-283, from the river restoration program provided for in 87-1-257, from a combination of funds from these programs, or from any other department funds available for voluntary leases or other water augmentation measures.

(3) All leasing or other authorized water augmentation measures for instream flow must comply with all requirements provided in Title 85, chapter 2, parts 3 and 4.

History: En. Sec. 1, Ch. 84, L. 2005; amd. Sec. 2, Ch. 299, L. 2013.

87-1-275. Annual lottery of hunting licenses — residents only. (1) For each deer or elk general license purchased by a resident, as defined in 87-2-102, the department shall award the resident one free chance in the lottery established by this section.

(2) The commission may issue one license each license year for one of the following:

(a) shiras moose;

(b) mountain sheep; or

(c) mountain goat.

(3) (a) The restriction in 87-2-702(4) that a person who receives a moose, mountain goat, or mountain sheep special license is not eligible to receive another license for that species for the next 7 years does not apply to a person who receives a license through a lottery conducted pursuant to this section.

(b) Residents participating in the lottery pursuant to this section may also participate in the lottery established in 87-1-271.

(4) The commission shall establish rules regarding:

(a) the conduct of the lottery authorized in this section;

(b) the use of licenses issued through the lottery; and

(c) the rotation between the three species each year.

History: En. Sec. 1, Ch. 267, L. 2023.

87-1-276. Purpose. The purpose of 87-1-277 through 87-1-279 and this section is to create a continuing program and mechanism to provide funding, through the department, to private shooting clubs, private organizations, local governments, and school districts for the establishment and improvement of a system of shooting ranges throughout Montana.

History: En. Sec. 1, Ch. 475, L. 1999.

87-1-277. Shooting range development grants. A private shooting club, private organization, unit of local government, or school district may seek a grant for a shooting range development project.

History: En. Sec. 2, Ch. 475, L. 1999.

87-1-278. Grant criteria. (1) An applicant for a grant pursuant to 87-1-277 shall provide matching funds in either cash or in-kind contributions. The match must represent $1 in value for each $1 of the grant. In-kind contributions include but are not limited to labor, materials, and real property. Existing assets and existing shooting range development may not apply to the match.

(2) An applicant that is a private shooting club or a private organization must be a nonprofit corporation pursuant to Title 35, chapter 2, with an organizational structure, officers, directors, and a registered agent.

(3) A grant must be used for the purchase of real property, earthwork, fixed improvements to existing shooting ranges or ranges being established, or reasonable grant application expenses. A grant may not be used for any expendable supplies for a shooting range.

(4) To be eligible for grant assistance, a private shooting club or a private organization:

(a) (i) shall accept in its membership any person who holds or is eligible to hold a Montana hunting license and who pays club or organization membership fees;

(ii) may not limit the number of members;

(iii) may charge a membership fee not greater than the per-member share of the club's or organization's reasonable cost of provision of services, including establishment, improvement, and maintenance of shooting facilities and other membership services; and

(iv) shall offer members occasional guest privileges at no cost to the member or invited guest and shall make a reasonable effort to hold a public sight-in day each September, when the general public may use the shooting range for a day-use fee or at no cost; or

(b) shall admit the general public for a reasonable day-use fee.

(5) A private shooting club, private organization, unit of local government, or school district that accepts a grant under 87-1-276, 87-1-277, 87-1-279, and this section shall provide the department with a future interest, providing that upon the discontinued use of its shooting range facility or its dissolution, the assets of the facility revert to the department. The department may hold the property indefinitely pending identification of a new entity to operate the facility. If a facility funded under 87-1-276, 87-1-277, 87-1-279, and this section is sold for a use other than a shooting range facility and the sale proceeds are not reinvested in another shooting range facility within 1 year of the sale, the entity that sells the facility shall reimburse the grant program for all funds received under 87-1-276, 87-1-277, 87-1-279, and this section.

(6) To be eligible for grant assistance, the applicant shall allow safe shooting of hunting arms. Hunting arms include shotguns, archery equipment, black powder arms, rifles, and pistols.

(7) An entity receiving a grant shall allow use of the facility by hunter education classes for no fee.

(8) A unit of local government or a school district shall compete on an equal basis with other applicants and shall provide access to its facility for a reasonable fee to any person holding or eligible to hold a Montana hunting license.

History: En. Sec. 3, Ch. 475, L. 1999.

87-1-279. Program rules. (1) The department may not use more than 15% of the program funds for administration.

(2) The department shall develop a simple application procedure and accountability system.

(3) The department shall make every effort to expend or obligate funds for shooting range improvement grants within the year for which they are appropriated.

(4) The department shall prioritize grant applications according to those that provide facilities for the greatest number of shooters, that accommodate the use of a combination of hunting arms, and that meet other criteria established by the department.

(5) The department may not grant more than 30% of the eligible funds for the establishment or improvement of any single facility in any year.

(6) The department shall promote the use of publicly owned land for shooting range facilities. The department may negotiate with federal, state, and local agencies to encourage land trades, shared or specific use designations, and other mechanisms to provide land for shooting range facilities.

History: En. Sec. 4, Ch. 475, L. 1999.

87-1-280 through 87-1-282 reserved.

87-1-283. Native Montana fish species enhancement program. (1) In order to enhance populations of native Montana fish species through habitat restoration, reductions in species competition, and natural reproduction, the department shall, through its future fisheries improvement program, restore habitats and spawning areas and reduce species competition in rivers, lakes, and streams for Montana's native fish species.

(2) In order to implement this section, the department may expend revenue from the native Montana fish species enhancement program for one additional full-time employee and one contractor to assist the review panel.

(3) The department shall also work with the department of transportation to implement enhancement of native Montana fish species by providing annual updates to the state transportation improvement program regarding possible additions to projects that will benefit the enhancement effort. State transportation improvement plan funds expended for native Montana fish species must be accounted for separately and reported annually.

History: En. Sec. 1, Ch. 529, L. 1999; amd. Sec. 1, Ch. 299, L. 2013.

87-1-284 reserved.

87-1-285. Fishing access enhancement program created — private landowner assistance to promote public fishing access — rules. (1) The department may establish programs of landowner assistance that encourage public access to and across private lands for purposes of fishing and may adopt rules to carry out program purposes. Rules may address but are not limited to incentives for private landowners who allow public fishing access on or across their lands, where legal access does not presently exist. Participation in the fishing access enhancement program is established through a cooperative agreement between a landowner and the department, including other resource management agencies when appropriate, that allows access for public fishing with certain restrictions or use rules.

(2) The department may also develop similar voluntary programs that are designed to promote public access across private lands for fishing purposes.

(3) Participation in a program established under subsection (1) is voluntary. Programs may not be structured in a manner that provides assistance to a private landowner who charges a fee for fishing access to private land that is enrolled in the program or who does not provide reasonable public fishing access to private land that is enrolled in the program. The commission shall develop criteria by which tangible benefits are allocated to participating landowners, and the department may distribute the benefits to participating landowners.

(4) Funds from the account established pursuant to 87-1-605 may be used to purchase or lease public fishing access at county road bridge crossings or for necessary parking facilities, trails, or ramps to facilitate fishing access to public waters at bridge crossings.

History: En. Sec. 1, Ch. 196, L. 2001.

87-1-286. Fishing access enhancement program — benefits for providing fishing access — cooperative agreement — factors for determining benefits earned — restriction on landowner liability. (1) As provided in 87-1-285, the department may establish and administer a voluntary program to enhance fishing access. The program must be designed to provide tangible benefits to participating private landowners who grant access to or across their land for public fishing.

(2) A contract for participation in the fishing access enhancement program is established through a cooperative agreement between the landowner and the department that will guarantee reasonable access for public fishing, which may include leases, easements, or rights-of-way to rivers, streams, ponds, or lakes on the landowner's property and leases or easements for access along the banks or shorelines of rivers, streams, ponds, or lakes on the property. Landowners may also form a voluntary association when development of a unified cooperative agreement is advantageous. A cooperative agreement must contain a detailed description of the plan developed by the landowner and the department and may include but is not limited to:

(a) fishing access management, which may include off-road parking, foot trails, and vehicle access roads;

(b) services to be provided to the public;

(c) landowner property rules and other restrictions;

(d) any other management information to be gathered, which must be made available to the public; and

(e) notice to adjacent landowners.

(3) If the department determines that the plan referred to in subsection (2) may adversely influence fish management decisions or fishing habitat on public lands, then other public land agencies, interested sportspersons, and affected landowners must be consulted. An affected landowner's management goals and personal observations regarding fish populations and habitat use must be considered in developing the plan.

(4) The commission shall develop rules for determining tangible benefits to be provided to a landowner for providing public fishing access. Benefits will be provided to offset potential impacts associated with public fishing access, including but not limited to those associated with general property maintenance, conservation efforts, weed control, fire protection, liability insurance, roads, fences, and parking area maintenance. Program priority must be given to properties that provide the greatest fishing access for the lowest costs. Factors used in determining benefits may include but are not limited to:

(a) the number of days of public fishing provided by a participating landowner;

(b) fish habitat provided; and

(c) access provided to adjacent public lands.

(5) Benefits earned by a landowner under this section may be applied in, but application is not limited to, the following manner:

(a) A landowner may receive direct monetary compensation for providing fishing access.

(b) A landowner may direct weed control payments to be made directly to the county weed control board or may elect to receive payments directly.

(c) A landowner may direct fire protection payments to be made directly to the local fire district or the county where the landowner resides or may elect to receive payments directly.

(d) A landowner may receive direct payment to offset insurance costs incurred for allowing public fishing access.

(e) The department may provide assistance in the construction and maintenance of roads, fencing, gates, and parking facilities and in the signing of property.

(6) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the fishing access enhancement program.

History: **En. Sec. 2, Ch. 196, L. 2001.**

87-1-287. Placement of warning sign in water legally accessible to public — liability limitation — role of department. (1) Unless acting with gross negligence, an individual or a nonprofit organization is not liable for civil damages resulting from the individual's or organization's placement of a sign or marker warning of a hazard in water legally accessible to the public as long as:

(a) the sign or marker is a white plastic milk bottle attached by a cord to the hazard or is a sign or marker approved by the department;

(b) the sign or marker contains or bears the name and telephone number of the individual or nonprofit organization that placed it;

(c) the individual or nonprofit organization maintains or removes the sign or marker when dictated by changing water conditions or seasonal changes; and

(d) the individual or nonprofit organization places the sign or marker only for the purpose of identifying hazards.

(2) (a) The provisions of this section are not intended to prohibit the placement of nonhazard signs or markers for waterskiing, diving, safe channels, or swimming areas or for posting speed limits.

(b) The department shall inform members of the public involved in the recreational use of the waters of this state of the placement, use, and significance of signs or markers warning of hazards in the water that are placed by individuals or nonprofit organizations pursuant to the provisions of this section.

(3) The provisions of this section apply only to the waters of this state that have not been determined to be navigable for purposes of federal jurisdiction over navigation aids.

History: **En. Sec. 1, Ch. 119, L. 2003.**

87-1-288 and 87-1-289 reserved.

87-1-290. Hunting access account. (1) There is a hunting access account in the state special revenue fund. Funds deposited in this account must be used for the purpose of funding any hunting access program.

(2) The following funds must be deposited in the account:

(a) 28.5% of the fee for Class B-10 nonresident big game combination licenses pursuant to 87-2-505 and 28.5% of the fee for Class B-11 nonresident deer combination licenses pursuant to 87-2-510;

(b) 28.5% of the fee for hunting licenses issued to nonresident relatives of a resident pursuant to 87-2-514;

(c) the hunting access fees collected pursuant to 87-2-116; and

(d) limited drawing refunds received pursuant to 87-2-124.

(3) Any interest or income earned on the account must be deposited in the account.

History: **En. Sec. 9, I.M. No. 161, approved Nov. 2, 2010; amd. Sec. 1, Ch. 415, L. 2011; amd. Sec. 5, Ch. 449, L. 2015; amd. Sec. 9, Ch. 63, L. 2019; amd. Sec. 2, Ch. 106, L. 2019.**

87-1-291 and 87-1-292 reserved.

87-1-293. Hunters against hunger — findings — optional donation — rulemaking. (1) The legislature finds that:

(a) hunters play a vital role in achieving population management objectives for game animals;

(b) the donation of game animals to charitable or nonprofit organizations for free distribution to people can help stop hunger; and

(c) hunters should have the option of donating $1 or more above the purchase price for certain licenses toward a program that would process donated wild game and distribute the meat to those in need.

(2) A person who applies for or purchases a deer, antelope, elk, or wild buffalo license may donate $1 or more in addition to the price of each license to the hunters against hunger program.

(3) The department shall deposit donations received pursuant to this section into the hunters against hunger account established in 87-1-628.

(4) The department shall adopt rules to implement the provisions of this section, including:

(a) providing the forms necessary for the hunters against hunger donation option;

(b) regulating the payment of funds from the hunters against hunger account to a nonprofit organization exempt from taxation under 26 U.S.C. 501(c)(3) for the processing of donated or seized game animals; and

(c) establishing guidelines for the donation of game animals to a nonprofit organization exempt from taxation under 26 U.S.C. 501(c)(3) that is paid from the hunters against hunger account and for the donation of processed game meat to those in need.

History: En. Sec. 1, Ch. 83, L. 2013.

87-1-294. *(Temporary)* **Unlocking public lands program — purpose — commission rulemaking authority.** (1) The legislature finds that increasing access to public lands will provide additional opportunities for activities such as hunting, fishing, wildlife viewing, and other recreational activities as determined by the commission.

(2) The department may establish and administer a voluntary program to encourage access through private land to parcels not previously deemed legally accessible to be known as the unlocking public lands program.

(3) Private land is not eligible for the unlocking public lands program if outfitting or commercial hunting restricts public hunting opportunities on that land.

(4) If the parcel not previously deemed legally accessible is leased state land under Title 77, chapter 1, only the lessee with a qualified access to that state land under 15-30-2380 is eligible for the unlocking public lands program.

(5) (a) A contract for participation in the unlocking public lands program is established through a cooperative agreement between the landowner and the department that guarantees reasonable access to public land through the landowner's private land. This contract serves as certification that the landowner is providing qualified access to public land and is eligible for the tax credit identified in 15-30-2380. The contract must include a certification number for identification purposes. The department shall provide a copy of the contract to the landowner and notify the department of revenue of the certification number. Contracts may be established with landowners:

(i) to provide direct access across a landowner's land to a public parcel; or

(ii) who own land adjacent to the point where the corners of two parcels of public land meet. A landowner with a contract pursuant to this subsection (5)(a)(ii) shall grant access through the landowner's land to establish a corridor between the two parcels of public land. At least one of the parcels of public land must be accessible by a public road, waterway, or access granted by a landowner.

(b) Contracts under subsection (5) may be established with landowners who, prior to January 1, 2016, provided access to public land that was otherwise not legally accessible under subsection (9). Landowners who establish contracts under this subsection (5)(b) are eligible to receive the tax credit identified in 15-30-2380.

(6) The commission shall develop rules for establishing contracts under this section regarding:

(a) duration of access;

(b) types of qualified access; and

(c) reasonable landowner-imposed limitations.

(7) The department shall provide public notice of any available qualified access to public land established through the unlocking public lands program.

(8) Recreational users of access established by the unlocking public lands program shall remain in the prescribed access route or corridor as defined by the contract in subsection (5).

(9) For purposes of this section:

(a) "parcels not previously deemed legally accessible" means public land that cannot be accessed by:

(i) public road, right-of-way, or easement;

(ii) public waters;

(iii) adjacent federal, state, county, or municipal land that is open to public use; or

(iv) adjacent private land because that landowner has not granted permission to cross; and

(b) "public land" means:

(i) state land, as defined in 77-1-101; or

(ii) federal land managed by the U.S. forest service or the bureau of land management. *(Terminates December 31, 2027—secs. 1, 2, Ch. 139, L. 2017.)*

History: En. Sec. 2, Ch. 346, L. 2013; amd. Sec. 2, Ch. 392, L. 2015.

87-1-295. Public access land agreement — terms — application fee. (1) A public access land agreement may be granted only to a landowner who is providing access across the landowner's land to public land that is leased by the landowner or to public land for which there is no leaseholder. An agreement may not include land for which the landowner is also compensated pursuant to 76-17-102 or 87-1-294.

(2) The department may negotiate the terms of a proposed public access land agreement with the landowner. Negotiable terms include:

(a) the amount of compensation, not to exceed $15,000 annually, and the duration of the agreement;

(b) improvements to the land provided by the department that may facilitate public access;

(c) the location of the access and the transportation mode by which the public may use the access;

(d) time periods when the access may and may not be used; and

(e) penalties for trespassing on private land not covered by the agreement.

(3) The private land/public wildlife advisory committee appointed pursuant to 87-1-269 shall review proposed public access land agreements and make recommendations to the department. The department shall consider the recommendations when issuing agreements.

(4) The department may revoke a public access land agreement for a violation of the terms of the agreement.

(5) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who holds a public access land agreement.

(6) The department may adopt rules to implement the provisions of this section.

History: En. Sec. 1, Ch. 296, L. 2019; amd. Sec. 3, Ch. 552, L. 2021; amd. Sec. 1, Ch. 265, L. 2023.

87-1-296. Repealed. Sec. 25, Ch. 552, L. 2021.

History: En. Sec. 2, Ch. 296, L. 2019.

87-1-297. Repealed. Sec. 25, Ch. 552, L. 2021.

History: En. Sec. 3, Ch. 296, L. 2019.

87-1-298. Supporting bowhunters with disabilities program — findings — optional donation — rulemaking. (1) The legislature finds that:

(a) archery hunting is an important part of Montana's harvest heritage that should be accessible to as many individuals as possible;

(b) some hunters require expensive modified archery equipment specifically designed to accommodate their disability;

(c) charitable and nonprofit organizations assist in defraying the costs of modified archery equipment for some hunters;

(d) donations can help organizations provide more modified archery equipment to more hunters with disabilities; and

(e) hunters should have the option of donating $1 or more above the purchase price of certain licenses to assist organizations in being able to provide modified archery equipment to greater numbers of hunters with disabilities.

(2) A person who applies for or purchases a hunting license may donate $1 or more in addition to the price of the license to the supporting bowhunters with disabilities program.

(3) The department shall deposit donations received pursuant to this section into the supporting bowhunters with disabilities account established in 87-1-630.

(4) The department shall adopt rules to implement the provisions of this section, including:

(a) providing the forms or mechanisms necessary for the supporting bowhunters with disabilities donation option;

(b) regulating the payment of funds from the supporting bowhunters with disabilities account to a nonprofit organization exempt from taxation under 26 U.S.C. 501(c)(3) to acquire modified archery equipment for hunters who have a permit to modify archery equipment; and

(c) establishing guidelines for the donation of modified archery equipment purchased with funds from the supporting bowhunters with disabilities account to Montana hunters who have a permit to modify archery equipment.

History: En. Sec. 1, Ch. 563, L. 2025.

Compiler's Comments

Effective Date: Section 6, Ch. 563, L. 2025, provided: "[This act] is effective July 1, 2025."

Part 3
Fish and Wildlife Commission

Part Cross-References

Establishment, composition, and qualifications of Commission — quasi-judicial designation, 2-15-3402.

87-1-301. Powers of commission. (1) Except as provided in subsections (6) and (7), the commission:

(a) shall set the policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department related to fish and wildlife as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) except as provided in 23-1-111 and 87-1-303(3), shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) shall adopt the rules of the individual landowners governing the public use of each landowner's private property managed by the department under active public access agreements with private landowners;

(e) must have the power within the department to establish wildlife refuges and bird and game preserves;

(f) shall approve all acquisitions or transfers by the department of interests in land or water, except as provided in 23-1-111 and 87-1-209(2) and (4);

(g) except as provided in 23-1-111, shall review and approve the budget of the department prior to its transmittal to the office of budget and program planning;

(h) except as provided in 23-1-111, shall review and approve construction projects that have an estimated cost of more than $1,000 but less than $5,000;

(i) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular hunting district. As used in this subsection (1)(i), "landowner tolerance" means the written or documented verbal opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting district where a restriction on elk hunting on public property is proposed.

(j) shall set the policies for the salvage of antelope, deer, elk, or moose pursuant to 87-3-145;

(k) shall comply with, adopt policies that comply with, and ensure the department implements in each region the provisions of state wildlife management plans adopted following an environmental review conducted pursuant to Title 75, chapter 1, parts 1 through 3; and

(l) shall review and approve the issuance of an either-sex or antlerless elk license, permit, or combination thereof to a landowner or a landowner's designee pursuant to 87-2-513.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders:

(i) for the biologically sound management of big game populations of elk, deer, and antelope;

(ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

(iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321 through 87-1-325.

(5) (a) Subject to the provisions of subsection (5)(b), the commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts.

(b) The commission shall adopt rules for the use of and set quotas for the sale of Class D-4 nonresident hound licenses by hunting district, portions of a hunting district, group of districts, or administrative regions.

(c) The commission shall consider, but is not limited to consideration of, the following factors:

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.

(6) The commission may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

(a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons and the special muzzleloader heritage hunting season established in 87-1-304;

(b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including bows and arrows, traditional handguns, and muzzleloading rifles;

(c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);

(d) the regulation of migratory game bird hunting pursuant to 87-3-403; or

(e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h).

(7) Pursuant to 23-1-111, the commission does not oversee department activities related to the administration of state parks, primitive parks, state recreational areas, public camping grounds, state historic sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, and 9.

History: En. 26-103.1 by Sec. 16, Ch. 417, L. 1977; R.C.M. 1947, 26-103.1; amd. Sec. 1, Ch. 22, L. 1991; amd. Sec. 1, Ch. 267, L. 1995; amd. Sec. 1, Ch. 355, L. 1997; amd. Sec. 1, Ch. 373, L. 1999; amd. Sec. 1, Ch. 533, L. 1999; amd. Sec. 1, Ch. 575, L. 2001; amd. Sec. 1, Ch. 127, L. 2003; amd. Sec. 7, Ch. 553, L. 2003; amd. Sec. 2, Ch. 430, L. 2005; amd. Sec. 2, Ch. 262, L. 2007; amd. Sec. 1, Ch. 174, L. 2011; amd. Sec. 1, Ch. 254, L. 2011; amd. Sec. 2, Ch. 370, L. 2011; amd. Sec. 1, Ch. 391, L. 2011; amd. Sec. 2, Ch. 137, L. 2013; amd. Sec. 2, Ch. 163, L. 2013; amd. Sec. 29, Ch. 235, L. 2013; amd. Sec. 2, Ch. 349, L. 2017; amd. Sec. 2, Ch. 378, L. 2019; amd. Sec. 1, Ch. 94, L. 2021; amd. Sec. 2, Ch. 232, L. 2021; amd. Sec. 4, Ch. 552, L. 2021; amd. Sec. 1, Ch. 219, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 219, L. 2025. Amendment effective April 17, 2025.

Cross-References

Seasonal rules adopted annually, 2-4-102.

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Local government denied powers affecting Title 87, 7-1-111.

State-Tribal Cooperative Agreements Act, Title 18, ch. 11.

Establishment of use rules, 23-1-106, 23-1-202.

Commission to submit to Legislature proposed park, recreational, and historic areas, 23-1-108.

Acquisition, exchange, or sale of lands and waters, 87-1-209, 87-1-701, 87-1-703, 87-1-709, 87-1-711, 87-1-713, 87-1-714.

Hunter management and hunting access enhancement programs, 87-1-265 through 87-1-269.

Fish and wildlife preserves and refuges, 87-1-706, 87-5-401, 87-5-402.

License and rules for falconry and raptors, 87-5-204.

87-1-302. Commission meetings. The members of the commission shall hold quarterly or other meetings for the transaction of business at times and places it considers necessary and proper. The meetings must be called by the presiding officer or by a majority of the commission and must be held at the time and place specified in the call for the meeting. A majority of the members of the commission constitute a quorum for the transaction of any business that may come before it. The commission shall keep a record of all the business transacted by it. The presiding officer and secretary shall sign all orders, minutes, or documents for the commission.

History: En. Sec. 3, Ch. 193, L. 1921; re-en. Sec. 3652, R.C.M. 1921; amd. Sec. 1, Ch. 77, L. 1923; amd. Sec. 1, Ch. 192, L. 1925; re-en. Sec. 3652, R.C.M. 1935; amd. Sec. 1, Ch. 114, L. 1945; amd. Sec. 1, Ch. 52, L. 1957; amd. Sec. 1, Ch. 119, L. 1959; amd. Sec. 23, Ch. 271, L. 1963; amd. Sec. 2, Ch. 511, L. 1973; R.C.M. 1947, 26-103(part); amd. Sec. 2836, Ch. 56, L. 2009.

87-1-303. Rules for use of lands and waters. (1) Except as provided in 23-1-111, 87-1-301(6), and subsection (3) of this section, the commission may adopt and enforce rules governing uses of lands that are acquired or held under easement by the commission or lands that it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules must be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements must itemize uses as listed in 87-1-209.

(2) Except as provided in 87-1-301(6), the commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams that are legally accessible to the public or on reservoirs and lakes that it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules must be adopted in the interest of public health, public safety, public welfare, and protection of property and public resources in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, the operation of personal watercraft, the resolution of conflicts between users of motorized and nonmotorized boats, waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated pursuant to the authority contained in this section must be areas that are legally accessible to the public. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

(3) (a) The commission may not regulate or classify domestic livestock trailing as a commercial activity or commercial use that is subject to licensing, permitting, or fee requirements. Domestic livestock trailing on land owned or controlled by the department is exempt from the requirements of Title 75, chapter 1, parts 1 through 3.

(b) The commission may authorize domestic livestock trailing across land owned or controlled by the department that is designated as a wildlife management area. The commission may adopt rules governing the timing of and the route to be used for domestic livestock trailing activities to the extent that the rules are necessary both to enable the trailing of domestic livestock across the designated wildlife management area and to protect and enhance state lands. The rules may not:

(i) require a fee for domestic livestock trailing or related activities; or

(ii) prohibit or unreasonably interfere with domestic livestock trailing activities.

(4) For the purposes of this section, the following definitions apply:

(a) "Domestic livestock" means domestic animals kept for farm and ranch purposes, including but not limited to horses, cattle, sheep, goats, and dogs.

(b) "Domestic livestock trailing" means the entering upon and crossing of department lands and the use of the lands for forage by domestic livestock for a maximum of 96 consecutive hours.

History: En. 26-104.9 by Sec. 10, Ch. 511, L. 1973; amd. Sec. 1, Ch. 332, L. 1975; R.C.M. 1947, 26-104.9; amd. Sec. 486, Ch. 418, L. 1995; amd. Sec. 560, Ch. 546, L. 1995; amd. Sec. 3, Ch. 569, L. 1999; amd. Sec. 2, Ch. 254, L. 2011; amd. Sec. 3, Ch. 370, L. 2011; amd. Sec. 30, Ch. 235, L. 2013; amd. Sec. 3, Ch. 349, L. 2017.

Cross-References

Seasonal rules adopted annually, 2-4-102.
Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.
Adoption and enforcement of rules, 23-1-106.
Recreational use of streams, Title 23, ch. 2, part 3.
Boating rules, 23-2-523, 23-2-526, 23-2-529.
Navigable waters, 85-1-112.
Adjudication of water rights, Title 85, ch. 2, part 2.
Cooperative agreements over jointly controlled land, 87-1-210.
Hunter management and hunting access enhancement programs, 87-1-265 through 87-1-269.
Navigable waters subject to fishing rights, 87-2-305.

87-1-304. *(Temporary)* **Fixing of seasons and bag and possession limits.** (1) Subject to the provisions of 87-5-302 and subsections (7) through (9) of this section, the commission may:

(a) fix seasons, bag limits, possession limits, and season limits;

(b) open or close or shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing animal as defined by 87-2-101;

(c) declare areas open to the hunting of deer, antelope, elk, moose, sheep, goat, mountain lion, bear, wild buffalo or bison, and wolf by persons holding an archery stamp and the required license, permit, or tag and designate times when only bows and arrows may be used to hunt deer, antelope, elk, moose, sheep, goat, mountain lion, bear, wild buffalo or bison, and wolf in those areas;

(d) subject to the provisions of 87-1-301(6), restrict areas and species to hunting with only specified hunting arms, including bow and arrow, for the reasons of safety or of providing diverse hunting opportunities and experiences; and

(e) declare areas open to special license holders only and issue special licenses in a limited number when the commission determines, after proper investigation, that a special season is necessary to ensure the maintenance of an adequate supply of game birds, fish, or animals or fur-bearing animals. The commission may declare a special season and issue special licenses when game birds, animals, or fur-bearing animals are causing damage to private property or when a written complaint of damage has been filed with the commission by the owner of that property. In determining to whom special licenses must be issued, the commission may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. The procedures used for awarding the permits from the drawing system must be determined by the commission.

(2) The commission may adopt rules governing the use of livestock and vehicles by archers during special archery seasons.

(3) Subject to the provisions of 87-5-302 and subsection (7) of this section, the commission may divide the state into fish and game districts and create fish, game, or fur-bearing animal districts throughout the state. The commission may declare a closed season for hunting, fishing, or trapping in any of those districts and later may open those districts to hunting, fishing, or trapping.

(4) The commission may declare a closed season on any species of game, fish, game birds, or fur-bearing animals threatened with undue depletion from any cause. The commission may close any area or district of any stream, public lake, or public water or portions thereof to hunting, trapping, or fishing for limited periods of time when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations or to prevent the undue depletion of fish, game, fur-bearing animals, game birds, and nongame birds. The commission may open the area or district upon consent of a majority of the property owners affected.

(5) The commission may authorize the director to open or close any special season upon 12 hours' notice to the public.

(6) The commission may declare certain fishing waters closed to fishing except by persons under 15 years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and enjoyment of juveniles under 15 years of age, at times and in areas the commission in its discretion considers advisable and consistent with its policies relating to fishing.

(7) In an area immediately adjacent to a national park, the commission may not:

(a) prohibit the hunting or trapping of wolves; or

(b) close the area to wolf hunting or trapping unless a wolf harvest quota established by the commission for that area has been met.

(8) The commission may authorize a wolf trapping season that opens the first Monday after Thanksgiving and closes March 15 of the following calendar year, except that the commission may adjust the dates for specific wolf management units based on regional recommendations.

(9) There is established a special muzzleloader heritage hunting season that begins on the second Saturday after the end of the regular season and lasts 9 days. During this season, subject to the provisions of 87-6-401(1)(i) and rules adopted by the commission, a person may take a deer or elk with a valid license or permit using plain lead projectiles and a muzzleloading rifle that is charged with loose black powder, loose pyrodex, or an equivalent loose black powder substitute and ignited by a flintlock, wheel lock, matchlock, or percussion mechanism using a percussion or musket cap. The muzzleloading rifle must be a minimum of 45 caliber and may not have more than two barrels.

(10) For the purpose of shed hunting as defined in 87-2-101 in a wildlife management area, the commission shall allow a resident as defined in 87-2-102 access to the area 7 days in advance of a nonresident. A nonresident who violates this subsection (10) is subject to the penalties provided for in 87-2-530.

87-1-304. *(Effective March 1, 2026)* **Fixing of seasons and bag and possession limits.** (1) Subject to the provisions of 87-5-302 and subsections (7) through (10) of this section, the commission may:

(a) fix seasons, bag limits, possession limits, and season limits;

(b) open or close or shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing animal as defined by 87-2-101;

(c) declare areas open to the hunting of deer, antelope, elk, moose, sheep, goat, mountain lion, bear, wild buffalo or bison, and wolf by persons holding an archery stamp and the required license, permit, or tag and designate times when only bows and arrows may be used to hunt deer, antelope, elk, moose, sheep, goat, mountain lion, bear, wild buffalo or bison, and wolf in those areas;

(d) subject to the provisions of 87-1-301(6), restrict areas and species to hunting with only specified hunting arms, including bow and arrow, for the reasons of safety or of providing diverse hunting opportunities and experiences; and

(e) declare areas open to special license holders only and issue special licenses in a limited number when the commission determines, after proper investigation, that a special season is necessary to ensure the maintenance of an adequate supply of game birds, fish, or animals or fur-bearing animals. The commission may declare a special season and issue special licenses when game birds, animals, or fur-bearing animals are causing damage to private property or when a written complaint of damage has been filed with the commission by the owner of that property. In determining to whom special licenses must be issued, the commission may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. The procedures used for awarding the permits from the drawing system must be determined by the commission.

(2) The commission may adopt rules governing the use of livestock and vehicles by archers during special archery seasons.

(3) Subject to the provisions of 87-5-302 and subsection (7) of this section, the commission may divide the state into fish and game districts and create fish, game, or fur-bearing animal districts throughout the state. The commission may declare a closed season for hunting, fishing, or trapping in any of those districts and later may open those districts to hunting, fishing, or trapping.

(4) The commission may declare a closed season on any species of game, fish, game birds, or fur-bearing animals threatened with undue depletion from any cause. The commission may close any area or district of any stream, public lake, or public water or portions thereof to hunting, trapping, or fishing for limited periods of time when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations or to prevent the undue depletion of fish, game, fur-bearing animals, game birds, and nongame birds. The commission may open the area or district upon consent of a majority of the property owners affected.

(5) The commission may authorize the director to open or close any special season upon 12 hours' notice to the public.

(6) The commission may declare certain fishing waters closed to fishing except by persons under 15 years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and enjoyment of juveniles under 15 years of age, at times and in areas the commission in its discretion considers advisable and consistent with its policies relating to fishing.

(7) In an area immediately adjacent to a national park, the commission may not:

(a) prohibit the hunting or trapping of wolves; or

(b) close the area to wolf hunting or trapping unless a wolf harvest quota established by the commission for that area has been met.

(8) The commission may authorize a wolf trapping season that opens the first Monday after Thanksgiving and closes March 15 of the following calendar year, except that the commission may adjust the dates for specific wolf management units based on regional recommendations.

(9) There is established a special muzzleloader heritage hunting season that begins on the second Saturday after the end of the regular season and lasts 9 days. During this season, subject to the provisions of 87-6-401(1)(i) and rules adopted by the commission, a person may take a deer or elk with a valid license or permit using plain lead projectiles and a muzzleloading rifle that is charged with loose black powder, loose pyrodex, or an equivalent loose black powder substitute and ignited by a flintlock, wheel lock, matchlock, or percussion mechanism using a percussion or musket cap. The muzzleloading rifle must be a minimum of 45 caliber and may not have more than two barrels."

(10) (a) Except on privately owned lands that are not a part of a hunting access program pursuant to 87-1-246 through 87-1-249 and 87-1-265, the commission shall allow residents as defined in 87-2-102 to begin hunting 10 days prior to nonresidents for all upland game birds, including ring-necked pheasant, but excluding mountain grouse.

(b) For the purposes of this subsection (10), "mountain grouse" means blue grouse, spruce (Franklin) grouse, and ruffed grouse.

(11) For the purpose of shed hunting as defined in 87-2-101 in a wildlife management area, the commission shall allow a resident as defined in 87-2-102 access to the area 7 days in advance of a nonresident. A nonresident who violates this subsection (11) is subject to the penalties provided for in 87-2-530.

History: En. 26-104.3 by Sec. 4, Ch. 511, L. 1973; R.C.M. 1947, 26-104.3; amd. Sec. 1, Ch. 220, L. 1979; amd. Sec. 1, Ch. 313, L. 1983; amd. Sec. 1, Ch. 487, L. 1985; amd. Sec. 1, Ch. 517, L. 1987; amd. Sec. 1, Ch. 589, L. 1993; amd. Sec. 1, Ch. 3, L. 2001; amd. Sec. 1, Ch. 13, L. 2009; amd. Sec. 1, Ch. 221, L. 2011; amd. Sec. 1, Ch. 292, L.

2011; amd. Sec. 4, Ch. 370, L. 2011; amd. Sec. 1, Ch. 13, L. 2013; amd. Sec. 4, Ch. 349, L. 2017; amd. Sec. 1, Ch. 163, L. 2021; amd. Sec. 3, Ch. 232, L. 2021; amd. Sec. 1, Ch. 616, L. 2025; amd. Sec. 2, Ch. 748, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 1, Ch. 616, L. 2025. Amendment effective March 1, 2026.

See 2025 Session Law for amendment made by sec. 2, Ch. 748, L. 2025. Amendment effective October 1, 2025.

Cross-References

Property damage by wild animals — special season, 87-1-225, 87-1-226.
Mourning dove as migratory game bird — season restricted, 87-2-101.
Restriction on number of licenses, 87-1-266, 87-2-104, 87-2-505, 87-2-506, 87-2-701.
Wild turkey tags and fees, 87-2-403.
Separation of Class B-7 license from Class B-10 license for deer management purposes, 87-2-512.
Closure of hunting and fishing areas, 87-3-106, 87-5-402.
Migratory game birds — bag limits, 87-3-403.
Grizzly bear seasons, 87-5-302.
Creation and posting of districts, 87-5-402.

87-1-305. Fish and game refuges. (1) The commission may establish and close to hunting, trapping, or fishing any game, bird, or fish refuge on public lands and, with the consent of the owner, on private lands. It may close streams, lakes, or parts of them to hunting, trapping, or fishing.

(2) The commission may establish game refuges in which game and fur-bearing animals, game or nongame birds may breed and replenish. These refuges shall be established by order of the commission upon petition and proper showing that the action is, in judgment of the commission, necessary and in the best interest of the wildlife within the area to be included in the refuge. The purpose of this provision is to establish small refuges rather than large preserves or rather than close large areas to hunting or trapping.

(3) The commission may designate and protect certain areas as resting, feeding, and breeding grounds for migratory birds, in which hunting and molestation are forbidden. The purpose of this provision is not to interfere unduly with the hunting of waterfowl but to provide havens in which they can rest, feed, and breed without molestation.

(4) After a petition has been duly filed with the secretary of the commission requesting that an area be set aside as a game refuge, the secretary shall immediately publish a notice in a paper of general circulation in the county in which the area is located. The notice shall state that a hearing on the matter will be held at a designated place in the county not less than 15 days after first publication, at which time and place all interested parties may appear and be heard.

History: En. 26-104.8 by Sec. 9, Ch. 511, L. 1973; R.C.M. 1947, 26-104.8.

Cross-References

State-federal relationships and wildlife projects, Title 87, ch. 1, part 7.
Game preserves and closed areas, Title 87, ch. 5, part 4.

87-1-306. Designation of certain river stretches as no-wake waters — personal watercraft use prohibited. (1) In the interest of public health, safety, and welfare and protection of property and public resources, the use of personal watercraft is prohibited on the headwaters of the Missouri River downstream to its confluence with Prewett Creek, except in Missouri River reservoirs, and including all tributaries but not their reservoirs.

(2) The waters from Hauser dam downstream to Beaver Creek are limited to a controlled no-wake speed.

(3) This section does not apply to the use of the designated waters for search and rescue, official patrol, or scientific purposes.

(4) This section may not be construed to limit the authority of the commission or department to enact by administrative rule or to enforce any other restrictions on any surface waters in the interests of public health, safety, or welfare, the protection of property or public resources, or the resolution of conflicts between users of motorized and nonmotorized boats.

History: En. Sec. 4, Ch. 569, L. 1999.

87-1-307 through 87-1-320 reserved.

87-1-321. Purpose. The purpose of 87-1-321 through 87-1-325 is to require the commission, with advice of the department, to manage elk, deer, and antelope populations in a sustainable manner that keeps animal populations at a number that does not adversely affect Montana land.

History: En. Sec. 1, Ch. 553, L. 2003.

87-1-322. Calculation of available habitat. When determining the total acreage that serves as habitat for elk, deer, and antelope, the commission shall consider public land and private land for wildlife management or habitat enhancement purposes. This calculation must be reconsidered and provided to the public by October 1 of each odd-numbered year.

History: **En. Sec. 2, Ch. 553, L. 2003.**

87-1-323. Viable elk, deer, and antelope populations based on habitat acreage — reduction of populations as necessary. (1) Based on the habitat acreage that is determined pursuant to 87-1-322, the commission shall determine the appropriate elk, deer, and antelope numbers that can be viably sustained. The department shall consider the specific concerns of private landowners when determining sustainable numbers pursuant to this section.

(2) Once the sustainable population numbers are determined as provided in subsection (1), the department shall implement, through existing wildlife management programs, necessary actions with the objective that the population of elk, deer, and antelope remains at or below the sustainable population. The programs may include but are not limited to:

(a) liberalized harvests;
(b) game damage hunts;
(c) landowner permits; or
(d) animal relocation.

(3) The department shall:

(a) manage with the objective that populations of elk, deer, and antelope are at or below the sustainable population number by January 1, 2009; and

(b) evaluate the elk, deer, and antelope populations on an annual basis and provide that information to the public.

History: **En. Sec. 3, Ch. 553, L. 2003.**

87-1-324. Sustainable elk, deer, and antelope populations program — funding. The department shall use money from the fish and game fund, as described in 87-1-601(3), to implement 87-1-321 through 87-1-325.

History: **En. Sec. 4, Ch. 553, L. 2003.**

87-1-325. Rulemaking — discounted antlerless elk B tag licenses. (1) The department and the commission shall adjust existing wildlife management rules and plans to implement 87-1-321 through 87-1-325.

(2) The department and the commission may adopt rules for determining sustainability. The commission shall consider average carrying capacity and use generally accepted animal unit factors for each species in each commission region.

(3) Any rules adopted by the department pursuant to subsection (2) must be adopted in a timely manner.

(4) The commission may offer for sale at one-half the cost of a regularly priced license Class A-9 resident antlerless elk B tag licenses and Class B-12 nonresident antlerless elk B tag licenses to be used as prescribed by the commission on private lands in hunting districts where the elk population is above the sustainable population number established pursuant to 87-1-323 as determined by the department's most recent elk survey count.

History: **En. Sec. 5, Ch. 553, L. 2003; amd. Sec. 2, Ch. 486, L. 2021.**

Part 4
Director of Fish, Wildlife, and Parks

87-1-401. Director to carry out policies. The director shall carry out the policies of the commission and the board and shall adopt rules authorized by law to implement those policies.

History: **En. 26-106.3 by Sec. 17, Ch. 417, L. 1977; R.C.M. 1947, 26-106.3; amd. Sec. 31, Ch. 235, L. 2013.**

Cross-References

Appointment of Director, Art. VI, sec. 8, Mont. Const.; 2-15-3401.
Reports to Governor, Art. VI, sec. 15, Mont. Const.
Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.
Member of Water Pollution Control Advisory Council, 2-15-2107.

87-1-402. Oath of director. Before entering upon official duties, the director shall take and subscribe the constitutional oath of office and shall in addition swear or affirm that the director does not hold another position or office or any position under any political committee or party. The oath or affirmation must be filed in the office of the secretary of state.

History: En. Sec. 11, Ch. 193, L. 1921; re-en. Sec. 3660, R.C.M. 1921; re-en. Sec. 3660, R.C.M. 1935; amd. Sec. 14, Ch. 177, L. 1965; R.C.M. 1947, 26-111(part); amd. Sec. 2837, Ch. 56, L. 2009.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.
Bonds of state officers and employees, Title 2, ch. 9, part 6.

87-1-403. Regulation of employees by director. (1) The director may suspend without pay, reduce in rank, or remove any employee at any time for cause, providing that any person who has been continuously employed for 1 year or more immediately preceding any suspension or discharge may demand and receive a hearing before the department on the charges filed.

(2) The director shall rate all employees on the basis of merit and efficiency in accordance with rules adopted by the department to secure a proper rating of each person employed. The department shall fix the salaries of employees. Travel expenses, as provided for in 2-18-501 through 2-18-503, are allowed employees on official business away from designated headquarters.

History: En. Sec. 8, Ch. 193, L. 1921; re-en. Sec. 3657, R.C.M. 1921; amd. Sec. 1, Ch. 150, L. 1955; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 4, Ch. 453, L. 1977; R.C.M. 1947, 26-108; amd. Sec. 4, Ch. 44, L. 1979; amd. Sec. 1, Ch. 56, L. 2021.

Cross-References

State employee classification, compensation, and benefits, Title 2, ch. 18.
State employee grievance procedures, Title 2, ch. 18, part 10.
Peace officer employment, education, and certification standards, 7-32-303.
Travel expenses, 87-1-503, 87-1-602.
Salaries, 87-1-601, 87-1-602.

87-1-404. Appointment of deputy director and wardens. The director shall have the power to employ and appoint a deputy director and a sufficient number of wardens for the proper enforcement of the fish and game laws of the state and the orders, rules, and regulations of the department and for such other purposes as the director may designate.

History: En. Sec. 7, Ch. 193, L. 1921; re-en. Sec. 3656, R.C.M. 1921; amd. Sec. 4, Ch. 192, L. 1925; amd. Sec. 3, Ch. 59, L. 1927; re-en. Sec. 3656, R.C.M. 1935; amd. Sec. 1, Ch. 158, L. 1941; amd. Sec. 1, Ch. 121, L. 1947; amd. Sec. 1, Ch. 58, L. 1951; amd. Sec. 1, Ch. 78, L. 1955; amd. Sec. 1, Ch. 77, L. 1957; amd. Sec. 5, Ch. 417, L. 1977; R.C.M. 1947, 26-107(part).

Cross-References

Enforcement of fish and game laws, 87-1-201.
Wardens — generally, Title 87, ch. 1, part 5.

87-1-405. Publication of laws. As soon as practicable after the adjournment of each session of the legislature, the director in cooperation with the attorney general shall make a compilation of the laws relating to fish, game, game birds, and animals in force at the date of the compilation and properly index them. Copies of the compilation, sufficient in number for the purposes of this section, shall be printed in pamphlet form, pocket size. The director shall distribute to justices of the peace, wardens, and other officers and persons empowered to issue licenses for hunting, fishing, and trapping a supply of the compilation sufficient to permit one copy to be given anyone desiring a copy. The expense incurred in printing the laws shall be paid out of fish and game moneys in the state special revenue fund.

History: En. Sec. 25, Ch. 193, L. 1921; re-en. Sec. 3674, R.C.M. 1921; re-en. Sec. 3674, R.C.M. 1935; amd. Sec. 20, Ch. 511, L. 1973; R.C.M. 1947, 26-125; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Publication of MCA, Title 1, ch. 11, part 3.
Uniform Electronic Legal Material Act, Title 1, ch. 11, part 4.
Dissemination of laws and proceedings, Title 5, ch. 11, part 2.

Part 5
Fish and Game Wardens

87-1-501. Selection and oath of wardens. (1) Wardens must be selected from applicants who have passed an examination that may be required according to the rules adopted and promulgated by the department. A person may not be appointed as a warden until a certificate has been issued to the person by the department to the effect that the person has passed the required examination and is a fit and proper person to perform the duties of the office.

(2) Before entering upon their official duties, state fish and game wardens shall take and subscribe the constitutional oath of office and shall in addition swear or affirm that they hold no other position or office or any position under any political committee or party. The oath or affirmation must be filed in the office of the secretary of state.

History: Ap. p. Sec. 7, Ch. 193, L. 1921; re-en. Sec. 3656, R.C.M. 1921; amd. Sec. 4, Ch. 192, L. 1925; amd. Sec. 3, Ch. 59, L. 1927; re-en. Sec. 3656, R.C.M. 1935; amd. Sec. 1, Ch. 158, L. 1941; amd. Sec. 1, Ch. 121, L. 1947; amd. Sec. 1, Ch. 58, L. 1951; amd. Sec. 1, Ch. 78, L. 1955; amd. Sec. 1, Ch. 77, L. 1957; amd. Sec. 5, Ch. 417, L. 1977; Sec. 26-107, R.C.M. 1947; Ap. p. Sec. 11, Ch. 193, L. 1921; re-en. Sec. 3660, R.C.M. 1921; re-en. Sec. 3660, R.C.M. 1935; amd. Sec. 14, Ch. 177, L. 1965; Sec. 26-111, R.C.M. 1947; R.C.M. 1947, 26-107(part), 26-111(part); amd. Sec. 2838, Ch. 56, L. 2009.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.
Bonds of state officers and employees, Title 2, ch. 9, part 6.
Peace officer employment, education, and certification standards, 7-32-303.
Game wardens' and peace officers' retirement, Title 19, ch. 8.

87-1-502. Qualifications, powers, and duties. (1) Wardens must be qualified by their experience, training, and skill in protection, conservation, and propagation of wildlife, game, fur-bearing animals, fish, and game birds and interested in this work. They shall devote all of their time for which they are appointed to their official duties.

(2) They shall enforce the laws of this state and the rules of the department with reference to the protection, preservation, and propagation of game and fur-bearing animals, fish, and game birds.

(3) They shall see that persons who hunt, fish, or take game or fur-bearing animals, game birds, or fish and that those persons who make recreational use of state lands, as defined in 77-1-101, for hunting and fishing, have the necessary licenses.

(4) They shall assist in the protection, conservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds and assist in the planting, distributing, feeding, and care of fish, game, fur-bearing animals, and game and nongame birds. They shall, when ordered by the department, assist in the destruction of predatory animals, birds, and rodents. They shall perform all other duties prescribed by the department and make a monthly report to the department correctly informing the department of their activities on each day of the preceding month with regard to the enforcement of the fish and game laws, showing where their duties called them and what they did. The reports must contain any pertinent recommendations the wardens may see fit to make.

(5) A warden may not compromise or settle violations of fish and game laws out of court.

(6) A warden has the authority to inspect any and all fish, game and nongame birds, waterfowl, game animals, and fur-bearing animals at reasonable times and at any location other than a residence or dwelling. Upon request therefor, all persons having in their possession any fish, game and nongame birds, waterfowl, game animals, and fur-bearing animals shall exhibit the same and all thereof to the warden for such inspection.

(7) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-7-101. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this title and rules of the department and the commission; and

(c) to report violations to the county attorney of the county in which they occur.

History: En. Sec. 10, Ch. 193, L. 1921; re-en. Sec. 3659, R.C.M. 1921; amd. Sec. 5, Ch. 192, L. 1925; amd. Sec. 12, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-110; amd. Sec. 8, Ch. 609, L. 1991; amd. Sec. 11, Ch. 662, L. 1991.

Cross-References

Seizure and impoundment of dogs running at large, 7-23-102.
Peace officer employment, education, and certification standards, 7-32-303.
Enforcement of park and outdoor recreation laws, 23-1-122.
Enforcement of boating laws, 23-2-506.
Duty to investigate boat accidents, 23-2-527.
Enforcement of snowmobile laws, 23-2-641.

Enforcement of off-highway vehicle laws, 23-2-806.
Enforcement of laws regarding outfitters and guides, 37-47-345.
Interstate Law Enforcement Mutual Aid Act, Title 44, ch. 11, part 3.
Definition of enter or remain unlawfully, 45-6-201.
Criminal trespass to property, 45-6-203.
Enforcement of prohibition against dumping dead animals, 75-10-233.
Litter control, 75-10-233.
Enforcement of laws regarding recreational use of state lands, 77-1-801.
Enforcement of fish and game laws, 87-1-201.
Checking stations, 87-1-207.
Appointment of wardens, 87-1-404.
Interstate Wildlife Violator Compact, Title 87, ch. 1, part 8.

87-1-503. Ex officio wardens. (1) The following are ex officio wardens:

(a) all sheriffs and their deputies;
(b) all constables;
(c) all peace officers of the state or any subdivision of the state;
(d) the executive director and investigators of the board of outfitters;
(e) all state forest officers;
(f) as authorized by cooperative agreement, any officers of the United States forest service, agents of the United States fish and wildlife service, and peace officers of the bureau of land management, national park service, and corps of engineers that are assigned to duty in this state;
(g) as authorized by cooperative agreement, tribal fish and game wardens;
(h) former fish and game wardens; and
(i) field personnel of the department as may be appointed by the director.

(2) Ex officio wardens serve without pay, except that the department may, in its discretion, allow travel expenses as provided for in 2-18-501 through 2-18-503. If allowed, travel expenses must be paid upon proper vouchers from the state fish and game funds.

(3) Ex officio wardens have the same powers with reference to the enforcement of the fish and game laws of this state and the laws relating to parks and outdoor recreation contained in Title 23, chapters 1 and 2, except chapter 2, part 7, as regularly appointed wardens, and it is their duty to assist, whenever possible, in the enforcement of those laws.

History: En. Sec. 14, Ch. 193, L. 1921; re-en. Sec. 3663, R.C.M. 1921; re-en. Sec. 3663, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1955; amd. Sec. 1, Ch. 236, L. 1965; amd. Sec. 13, Ch. 439, L. 1975; amd. Sec. 6, Ch. 417, L. 1977; R.C.M. 1947, 26-114; amd. Sec. 12, Ch. 662, L. 1991; amd. Sec. 1, Ch. 187, L. 1993; amd. Sec. 21, Ch. 328, L. 1995; amd. Sec. 3, Ch. 417, L. 1995; amd. Sec. 1, Ch. 32, L. 2009.

87-1-504. Protection of private property — duty of wardens. It is the duty of wardens to enforce and wardens have the power of peace officers in the enforcement of the provisions of 45-6-101, 45-6-203, 75-10-212(2), 77-1-801, 77-1-806, and rules adopted under 77-1-804 on private and state lands.

History: En. Sec. 1, Ch. 85, L. 1969; amd. Sec. 35, Ch. 513, L. 1973; R.C.M. 1947, 26-110.1; amd. Sec. 2, Ch. 599, L. 1985; amd. Sec. 9, Ch. 609, L. 1991; amd. Sec. 83, Ch. 10, L. 1993; amd. Sec. 119, Ch. 2, L. 2009; amd. Sec. 5, Ch. 552, L. 2021.

Cross-References

Damage to private property on Department land, 23-1-106.
Definition of enter or remain unlawfully, 45-6-201.
Entry on private land — policy, 87-1-229.

87-1-505. Repealed. Sec. 25, Ch. 552, L. 2021.

History: En. Sec. 2, Ch. 85, L. 1969; amd. Sec. 36, Ch. 513, L. 1973; R.C.M. 1947, 26-110.2; amd. Sec. 120, Ch. 2, L. 2009.

87-1-506. Enforcement powers of wardens. (1) A warden may:

(a) serve a subpoena issued by a court for the trial of a violator of the fish and game laws;
(b) conduct a search, with a search warrant, in accordance with Title 46, chapter 5;
(c) seize game, fish, game birds, and fur-bearing animals and any parts of them taken or possessed in violation of the law or the rules of the department;
(d) seize and hold, subject to law or the orders of the department, devices that have been used to unlawfully take game, fish, birds, or fur-bearing animals;
(e) arrest, in accordance with Title 46, chapter 6, a violator of a fish and game law or rule of the department, violation of which is a misdemeanor;

(f) enforce the disorderly conduct and public nuisance laws, 45-8-101 and 45-8-111, as they apply to the operation of motorboats on all waters of the state;

(g) as provided for in 37-47-345, investigate violations of 37-47-301(1) and (2) and 37-47-404;

(h) enforce the provisions of Title 80, chapter 7, part 10, and rules adopted under Title 80, chapter 7, part 10, for those invasive species that are under the department's jurisdiction;

(i) on the signing of an agreement as described in 77-1-815, enforce the provisions of Title 77 and rules adopted by the department of natural resources and conservation pertaining to the use of state trust lands; and

(j) exercise the other powers of peace officers in the enforcement of the fish and game laws, the rules of the department, and judgments obtained for violation of those laws or rules.

(2) The meat of game animals that are seized pursuant to subsection (1)(c) must be donated directly to the Montana food bank network or to public or charitable institutions to the extent reasonably feasible. Any meat that the department is unable to donate must be sold pursuant to 87-1-511, with the proceeds to be distributed as provided in 87-1-513(2).

History: En. 26-110.3 by Sec. 13, Ch. 511, L. 1973; amd. Sec. 1, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-110.3; amd. Sec. 1, Ch. 694, L. 1983; amd. Sec. 1, Ch. 336, L. 1991; amd. Sec. 3, Ch. 523, L. 1997; amd. Sec. 16, Ch. 429, L. 2009; amd. Sec. 1, Ch. 122, L. 2019; amd. Sec. 11, Ch. 281, L. 2021; amd. Sec. 11, Ch. 507, L. 2023.

Cross-References

Searches and seizures, Art. II, sec. 11, Mont. Const.; Title 46, ch. 5.

Motorboat noise limitation — violation as disorderly conduct and public nuisance, 23-2-526.

Enforcement of laws regarding outfitters and guides, 37-47-345.

Entry on private land — policy, 87-1-229.

Appointment of wardens, 87-1-404.

87-1-507 through 87-1-510 reserved.

87-1-511. Sale of confiscated birds and animals — disposition of seized grizzly bears. (1) Except as provided in 87-1-226(1), all birds, animals, fish, heads, hides, teeth, or other parts of any animal other than grizzly bear seized by any officer or warden or otherwise acquired by a department employee in the scope of employment may be sold, under the direction of the director or wardens, at a time, place, and manner so as to receive the highest price. The sale must be at public auction to the highest and best bidder. The director or the wardens shall publish notice of the time and place of the sale, together with a description of the birds, fish, animals, or parts or portions of animals to be sold, in a newspaper of general circulation published in the county where the sale is to be held. The notice must be published at least once, and the sale may not be less than 5 or more than 30 days after the last publication. If the property seized is perishable, it may be sold by those officers without publishing notice of the sale. The property may be sold upon that public notice and under those terms and conditions that in the discretion of the officers seem conducive to securing full value.

(2) All grizzly bears or heads, hides, teeth, claws, or other parts of grizzly bears seized by any officer or warden may be donated to museums, educational institutions, government agencies, or persons conducting scientific studies, as approved by the commission. If approved under federal law, parts may be sold at public auction if, after approval by the commission, a reasonable attempt has been made to dispose of the parts.

History: En. Sec. 47, Ch. 173, L. 1917; re-en. Sec. 3726, R.C.M. 1921; re-en. Sec. 3726, R.C.M. 1935; amd. Sec. 35, Ch. 511, L. 1973; R.C.M. 1947, 26-506; amd. Sec. 2, Ch. 120, L. 1985; amd. Sec. 1, Ch. 540, L. 1985; amd. Sec. 2839, Ch. 56, L. 2009.

87-1-512. Certificate of sale. (1) Upon the sale of property as provided in 87-1-511, the officer shall issue a certificate to the purchasing party, certifying that the purchaser has the legal right to be in possession of the property and that anyone so acquiring this property from the state is prohibited from reselling the property for human consumption.

(2) Only one carcass of either deer, moose, or elk may be purchased per person at an auction conducted pursuant to 87-1-511. At its discretion, the department may donate unsold carcasses to welfare departments, public institutions, or charitable institutions.

(3) Subsection (1) does not prohibit the resale of heads, hides, pelts, or mounts.

History: En. Sec. 48, Ch. 173, L. 1917; re-en. Sec. 3727, R.C.M. 1921; amd. Sec. 27, Ch. 192, L. 1925; re-en. Sec. 3727, R.C.M. 1935; amd. Sec. 1, Ch. 45, L. 1975; amd. Sec. 12, Ch. 9, L. 1977; R.C.M. 1947, 26-507; amd. Sec. 1, Ch. 108, L. 1989.

Cross-References
Meat donated to public entities, 87-1-226.

87-1-513. Disposition of proceeds of sale. (1) The money obtained upon the sale of seized property must be retained and accounted for by the department when the person having the property in possession at the time of seizure is prosecuted or when a prosecution of the person is pending. If the person charged with violating fish and game law is convicted or forfeits bond or bail, the money received for the sale of seized property must be paid to the state treasurer and be deposited to the credit of the fish and game fund except as provided in subsection (2). If the party from whom the property was taken is not found guilty, the money must be paid to the party from whom the game birds, wild animals, fish, or parts or portions thereof were taken. An officer is not liable for any damage caused by any search, examination, seizure, or sale. When wild animals, game birds, or fish are seized as provided in this part and the person or persons who killed or captured the wild animals, game birds, or fish cannot be ascertained or when the animals sold were killed pursuant to 87-1-225, then the money received from the sale of the wild animals, game birds, or fish must be paid directly to the state treasurer. The cost of advertising notice of sale, as required by 87-1-511, must be paid from the fish and game fund.

(2) The proceeds, after the department's cost of conducting the sale and costs incurred in donating game animal meat are deducted, from the sale of seized game animal meat must be deposited in the state special revenue fund to the credit of the department of public health and human services for the purposes of awarding grants to the Montana food bank network in this state. Money from the grants awarded to the Montana food bank network must be used for the processing of donated game animal meat. Any grant funds remaining after donated game animal meat is processed may be used for other appropriate purposes by the Montana food bank network.

History: En. Sec. 49, Ch. 173, L. 1917; re-en. Sec. 3728, R.C.M. 1921; re-en. Sec. 3728, R.C.M. 1935; R.C.M. 1947, 26-508; amd. Sec. 3, Ch. 120, L. 1985; amd. Sec. 1, Ch. 170, L. 1993; amd. Sec. 4, Ch. 523, L. 1997; amd. Sec. 13, Ch. 426, L. 2009; amd. Sec. 1, Ch. 134, L. 2011.

Cross-References
Use of fish and game money, 87-1-201, 87-1-601.

87-1-514. Record of confiscated property. The director and wardens shall keep a complete record of all property confiscated because of a violation of the game and fish laws, showing in detail a description of the property, the person from whom it was confiscated, the price received for it upon public sale, and the disposition of the money.

History: En. Sec. 50, Ch. 173, L. 1917; re-en. Sec. 3729, R.C.M. 1921; re-en. Sec. 3729, R.C.M. 1935; amd. Sec. 36, Ch. 511, L. 1973; R.C.M. 1947, 26-509.

Part 6
Finance

87-1-601. Use of fish and game money. (1) (a) Except as provided in 87-1-290, 87-1-293, 87-1-623, 87-1-298, and subsections (8) and (10) of this section, all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source must be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-411, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses,

and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in Title 87 means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (8) and (9), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Except as provided in 87-1-621, section 2(3), Chapter 560, Laws of 2005, and subsection (6) of this section, money must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department, except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the sale or lease of lands acquired and managed for the purposes of Title 23, chapter 1, must be deposited in the state special revenue fund in the account established for miscellaneous funds received for state parks and may be used only for the purposes of Title 23, chapter 1.

(7) Money received from the collection of license drawing applications is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(8) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

(9) The department of revenue shall deposit in the state general fund one-half of the money received from the fines imposed pursuant to Title 87, chapter 6.

(10) The department shall deposit all money received from the voluntary search and rescue donation in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in 10-3-801.

History: En. Sec. 21, Ch. 193, L. 1921; re-en. Sec. 3670, R.C.M. 1921; amd. Sec. 32, Ch. 59, L. 1927; amd. Sec. 1, Ch. 53, L. 1933; amd. Sec. 2, Ch. 114, L. 1945; amd. Sec. 159, Ch. 147, L. 1963; amd. Sec. 17, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-121; amd. Sec. 2, Ch. 640, L. 1979; amd. Sec. 1, Ch. 388, L. 1981; amd. Sec. 45, Ch. 281, L. 1983; amd. Sec. 62, Ch. 557, L. 1987; amd. Sec. 1, Ch. 41, L. 1991; amd. Sec. 3, Ch. 339, L. 1991; amd. Sec. 10, Ch. 609, L. 1991; amd. Sec. 4, Ch. 417, L. 1995; amd. Sec. 487, Ch. 418, L. 1995; amd. Sec. 31, Ch. 389, L. 1999; amd. Sec. 33, Ch. 34, L. 2001; amd. Sec. 45, Ch. 257, L. 2001; amd. Sec. 2, Ch. 381, L. 2003; amd. Sec. 7, Ch. 534, L. 2003; amd. Sec. 1, Ch. 326, L. 2005; amd. Sec. 15, Ch. 560, L. 2005; amd. Sec. 2, Ch. 332, L. 2007; amd. Sec. 5, Ch. 420, L. 2007; amd. Sec. 5, Ch. 330, L. 2009; amd. Sec. 3, I.M. No. 161, approved Nov. 2, 2010; amd. Sec. 3, Ch. 62, L. 2011; amd. Sec. 88, Ch. 258, L. 2011; amd. Sec. 1, Ch. 390, L. 2011; amd. Sec. 3, Ch. 83, L. 2013; amd. Sec. 8, Ch. 153, L. 2021; amd. Sec. 7, Ch. 563, L. 2021; amd. Sec. 3, Ch. 563, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 563, L. 2025. Amendment effective July 1, 2025.

Cross-References

Sum to be paid into game wardens' and peace officers' retirement account — state contribution, 19-8-504.
Disposition of fees, 37-47-306, 87-1-201, 87-1-701, 87-1-708, 87-1-710, 87-2-204, 87-4-602.
Payment of prosecution cost bills, 87-1-104.
Payment of employee salaries, 87-1-403.
Disposition of proceeds of sale of seized property, 87-1-513.
Disposition of fines, bonds, fees, and penalties, 87-4-808.

87-1-602. Payment of salaries, per diem, and expenses. All salaries, per diem, expenses, and claims incurred by the department or a person appointed or employed by it shall be paid out of fish and game moneys in the general fund, the federal special revenue fund, the state special revenue fund, or other applicable fund upon warrants properly drawn on those funds.

History: En. Sec. 23, Ch. 193, L. 1921; re-en. Sec. 3672, R.C.M. 1921; re-en. Sec. 3672, R.C.M. 1935; amd. Sec. 17, Ch. 97, L. 1961; amd. Sec. 18, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-123; amd. Sec. 1, Ch. 48, L. 1979; amd. Sec. 46, Ch. 281, L. 1983.

Cross-References

Travel expenses, 2-18-501 through 2-18-503, 87-1-403, 87-1-503.

State's contribution to game wardens' and peace officers' retirement account, 19-8-504.

87-1-603. Department-owned land subject to taxation — exceptions. (1) All land owned by the department of fish, wildlife, and parks is subject to taxation and must be assessed by the department of revenue as if it were taxable to a private citizen, except:

(a) department-owned land purchased before May 10, 2009, totaling less than 100 acres in a county; and

(b) lands owned by the department purchased before May 10, 2009, for game or bird farms or for fish hatchery purposes or lands acquired and managed for the purposes of Title 23, chapter 1.

(2) For every department purchase of land, the department shall notify the treasurer in the county where land was purchased.

(3) The amount to be paid to each county pursuant to this section is statutorily appropriated, as provided in 17-7-502.

History: En. Sec. 1, Ch. 1, L. 1951; amd. Sec. 1, Ch. 188, L. 1953; amd. Sec. 21, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-133; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 486, L. 1987; amd. Sec. 34, Ch. 325, L. 1995; amd. Sec. 8, Ch. 485, L. 2009; amd. Sec. 2, Ch. 421, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 421, L. 2025. Amendment effective May 5, 2025.

Retroactive Applicability: Section 4, Ch. 421, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2024."

87-1-604. Authorization for allocation of funds to school districts. The county commissioners of any county receiving funds as provided in 87-1-603 may allocate, in such amounts as they determine, any portion of the funds to any school district in the county whenever the school district contains any department lands. Any balance remaining after allocations have been made to school districts shall be credited to the general fund of the county.

History: En. Sec. 2, Ch. 1, L. 1951; amd. Sec. 3, Ch. 9, L. 1977; R.C.M. 1947, 26-134.

Cross-References

Computation of general fund net levy requirement by County Superintendent, 20-9-141.

87-1-605. Fees used to purchase recreational facilities. (1) One dollar of the fee for a Class A resident fishing license, 10% of the fee for a Class A-8 resident temporary fishing license, $1 of the fee for a Class B-4 nonresident fishing license, $3.50 of the fee for a Class B-5 nonresident fishing license, and $5 of the fee for a Class B nonresident fishing license must be used for the purchase, operation, development, and maintenance of fishing accesses; stream, river, and lake frontages; and the land considered necessary to provide recreational use of fishing accesses and stream, river, and lake frontages.

(2) The amount of funds used for operation and maintenance must equal at least 50% of the money set aside each year under this section and must be expended as provided in subsection (3). The funds raised under this section may not be used in lieu of any funds or sources of funds currently being used for acquisition or purchase of fishing accesses or stream, river, or lake frontages and the land considered necessary to provide recreational use of fishing accesses and stream, river, and lake frontages but are in addition to those funds. The funds used for operation and maintenance may be used only for these purposes on lands acquired with funds under this section after April 30, 1974.

(3) Operation and maintenance money set aside each year under this section must be expended based on the following priority:

(a) weed management;

(b) streambank restoration; and

(c) general operation and maintenance.

History: En. Sec. 3, Ch. 408, L. 1973; amd. Sec. 1, Ch. 82, L. 1977; R.C.M. 1947, 26-234; amd. Sec. 1, Ch. 461, L. 1981; amd. Sec. 6, Ch. 239, L. 1983; amd. Sec. 72, Ch. 18, L. 1995; amd. Sec. 1, Ch. 428, L. 1995; amd. Sec. 2, Ch. 336, L. 1997; amd. Sec. 2, Ch. 228, L. 2003.

Cross-References

Acquisition of recreational areas, 23-2-103.

Disposition of fees, 87-1-201, 87-1-701, 87-1-708, 87-1-710, 87-2-204, 87-4-602.

87-1-606. Fee limitation for multiple licenses. If a person is issued more than one license under part 4, 9, or 10 of chapter 4 of this title, the total assessment for initial fees or for renewal fees for all licenses issued to such person may not exceed the amount of the largest individual license fee.

History: En. Sec. 49, Ch. 570, L. 1983.

87-1-607 through 87-1-609 reserved.

87-1-610. Contributions for leasing appropriation rights — general spending authority. (1) The department may accept contributions from public or private entities for the purpose of leasing appropriation rights to maintain or enhance instream flows for the benefit of fisheries.

(a) Any contributions accepted by the department under this section must be deposited in the fish and wildlife mitigation trust fund established in 87-1-611.

(b) The department shall expend money obtained under this section and deposited in the fish and wildlife mitigation trust fund exclusively to lease existing rights for the purpose of maintaining or enhancing instream flows for fisheries.

(2) The department may also expend other departmental funds to lease existing rights for the purpose of maintaining or enhancing instream flows for fisheries, including but not limited to departmental funds in the river restoration special revenue account established under 87-1-258.

History: En. Sec. 5, Ch. 658, L. 1989; amd. Sec. 4, Ch. 175, L. 1993.

Cross-References

Water leasing study, 85-2-436.

87-1-611. Fish and wildlife mitigation trust fund created. (1) There is established, separate and apart from all public money or funds of this state, a fund to be known as the fish and wildlife mitigation trust fund. The fund must be administered by the department.

(2) The fund consists of:

(a) money received under written agreements, contracts, or authorizations with the department made for the purpose of fish and wildlife mitigation or enhancement;

(b) any gift, donation, grant, legacy, bequest, or devise made for the purpose of fish and wildlife mitigation or enhancement;

(c) any interest, earnings, or income of the fund; and

(d) any property or easements acquired through the expenditure of money from the fund.

History: En. Sec. 1, Ch. 445, L. 1987.

Cross-References

Fund structure, 17-2-102.

87-1-612. Purposes of the fish and wildlife mitigation trust fund. Expenditures may be made from the fish and wildlife mitigation trust fund for fish and wildlife mitigation or enhancement purposes pursuant to the written agreement, contract, authorization, or terms of a gift, donation, grant, legacy, bequest, or devise committing money to the fish and wildlife mitigation trust fund. The specific purposes are those designated in the written agreement, contract, authorization, or terms.

History: En. Sec. 2, Ch. 445, L. 1987.

87-1-613. Agreements for use of fund — department as trustee. (1) The department may enter into agreements with persons or entities committing money to the fish and wildlife mitigation trust fund concerning the purpose and manner of use of the money from the fish and wildlife mitigation trust fund.

(2) The department is the trustee of the fish and wildlife mitigation trust fund and is responsible for its administration and use.

History: En. Sec. 3, Ch. 445, L. 1987.

Cross-References

General powers of trustee, Title 72, ch. 38, part 8.

87-1-614. Expenditure of principal and earnings. The principal and interest, earnings, or income of the fish and wildlife mitigation trust fund shall be expended or retained according to the written agreement, contract, authorization, or terms of the gift, donation, grant, legacy, bequest, or devise committing money to the fish and wildlife mitigation trust fund.

History: En. Sec. 4, Ch. 445, L. 1987.

87-1-615. Investment of fish and wildlife mitigation trust fund. The fish and wildlife mitigation trust fund must be invested and managed by the board of investments as part of the unified investment program in a separate investment fund.

History: En. Sec. 5, Ch. 445, L. 1987.

Cross-References

Unified investment program, Art. VIII, sec. 13, Mont. Const.; Title 17, ch. 6, part 2.

87-1-616 through 87-1-620 reserved.

87-1-621. Forest management account. (1) There is a special revenue account called the forest management account to the credit of the department of fish, wildlife, and parks.

(2) The forest management account consists of money deposited into the account from forest management projects undertaken pursuant to 87-1-622 and from any other source. Any interest earned by the account must be deposited into the account.

(3) Except as otherwise directed by state or federal law, funds from the forest management account must be used by the department to implement forest management projects that may result pursuant to the provisions of 87-1-622.

History: En. Secs. 3, 4, Ch. 330, L. 2009; amd. Sec. 3, Ch. 395, L. 2011.

87-1-622. Forest management plan — sustainable yield study required — definition. (1) The commission and the board shall adopt forest management plans for lands under their jurisdiction, based on an annual sustainable yield, to implement the provisions of 87-1-201(10)(a)(iv).

(2) The department, under the direction of the commission, shall, before July 1, 2012, commission a study by a qualified independent third party to determine, using scientific principles, the annual sustainable yield on forested department lands. The department shall direct the qualified independent third party to determine the annual sustainable yield pursuant to all state and federal laws.

(3) The annual timber sale requirement for the timber sale program administered by the department to address fire mitigation, pine beetle infestation, and wildlife habitat enhancement may not exceed the annual sustainable yield.

(4) The commission and the board shall review and redetermine the annual sustainable yield for lands under their jurisdiction at least once every 5 years.

(5) Expenditures necessary to meet the requirements of this section are authorized to be made by the department pursuant to 87-1-601.

(6) For the purposes of this section, the term "annual sustainable yield" means the quantity of timber that can be harvested from forested department lands each year, taking into account the ability of forested lands to generate replacement tree growth and in accordance with:

(a) the provisions of 87-1-201(10)(a)(iv);

(b) state and federal laws, including but not limited to the laws pertaining to wildlife, recreation, and maintenance of watersheds; and

(c) water quality standards that protect fisheries and aquatic life and that are adopted under the provisions of Title 75, chapter 5.

History: En. Sec. 1, Ch. 395, L. 2011; amd. Sec. 32, Ch. 235, L. 2013; amd. Sec. 2, Ch. 117, L. 2023.

87-1-623. Wolf management account. (1) There is a wolf management account in the state special revenue fund established in 17-2-102. Fees collected from the sale of Class E-1 and Class E-2 wolf licenses and interest earned on the account must be deposited into the account. Subject to appropriation by the legislature, money deposited in the account must be used exclusively for the management of wolves as specified in subsection (2).

(2) Money deposited in accordance with subsection (1) must be equally divided and allocated for the following purposes:

(a) wolf-collaring activities conducted pursuant to 87-5-132; and

(b) lethal action conducted pursuant to 87-1-217 to take problem wolves that attack livestock.

(3) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account.

History: **En. Sec. 5, Ch. 390, L. 2011.**

87-1-624 reserved.

87-1-625. Funding for wolf management. (1) The department shall allocate $500,000 annually for wolf management.

(2) For the purposes of this section, the term "management" has the same meaning provided in 87-5-102 and includes:

(a) wolf collaring conducted pursuant to 87-5-132; and

(b) lethal action conducted pursuant to 87-1-217 to take problem wolves that attack livestock.

(3) Not more than 25% of the total funding allocated under this section may be used for administrative costs.

(4) Pursuant to 87-1-201, the department may allocate funds from any source to meet the requirements of this section.

(5) The department may contract with the United States department of agriculture wildlife services and county governments for the purposes of this section.

History: **En. Sec. 2, Ch. 400, L. 2011; amd. Sec. 9, Ch. 438, L. 2015.**

87-1-626. Big game and wildlife highway crossings and accommodations license plates — authorization. (1) An applicant for a generic specialty license plate that is sponsored by the department of fish, wildlife, and parks shall make a donation of $20 to the department upon initial issuance of the license plates and a donation of $20 for each annual renewal of the license plates.

(2) The department shall establish a generic specialty license plate, as defined in 61-3-401, no later than January 1, 2026.

(3) The donation provided for in subsection (1) must be paid to the county treasurer, who shall remit the entire amount to the department of revenue for deposit in the big game and wildlife highway crossings and accommodations state special revenue account established in 87-1-627.

History: **En. Sec. 1, Ch. 540, L. 2025.**

Compiler's Comments

Effective Date: Section 7, Ch. 540, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 8, 2025.

2025 Code Commissioner Correction: In (2) the Code Commissioner substituted "61-3-401" for "61-3-473". Ch. 395, L. 2025, repealed 61-3-473 and moved the definition of "generic specialty license plate" to 61-3-401.

87-1-627. Big game and wildlife highway crossings and accommodations account — purpose — funds invested — statutory appropriation. (1) There is a big game and wildlife highway crossings and accommodations state special revenue account within the state special revenue fund established in 17-2-102 administered by the department.

(2) The purpose of the account is to provide money exclusively for the design, construction, identification, maintenance, and conservation of wildlife crossings and other related crossing accommodations to improve wildlife permeability in the state, which may include but is not limited to:

(a) matching any federal money for a project to design, construct, identify, maintain, or protect wildlife crossings and other related crossing accommodation features;

(b) conducting studies on wildlife crossings and other related crossing accommodations;

(c) designing or constructing wildlife crossings and other related crossing accommodation features;

(d) planning related to wildlife crossings and other related crossing accommodation features, including assessing risk of wildlife disease transmission;

(e) staffing needs related to the design, construction, identification, maintenance, and conservation of wildlife crossings and other related crossing accommodation features; and

(f) any other needs the department identified in consultation with the department of transportation related to wildlife roadway accommodations.

(3) There must be deposited into the account transfers, gifts, grants, donations, income from investment of the fund, and any other money distributed or otherwise allocated to the fund.

(4) Money in the account is statutorily appropriated, as provided in 17-7-502, to the department for the purposes of 87-1-626 and 87-1-627.

(5) Money in the account may be used to fund the department of transportation for eligible projects or programs as determined by the department of fish, wildlife, and parks. The department of fish, wildlife, and parks shall consult with the department of transportation before funding qualifying projects in the state in accordance with subsection (2).

(6) Money that was not encumbered or expended from the account during the previous biennium must remain in the account.

(7) Deposits to the account must be placed in short-term investments to accrue interest. The interest must be deposited into the account.

History: En. Sec. 2, Ch. 540, L. 2025.

Compiler's Comments

Effective Date: Section 7, Ch. 540, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 8, 2025.

87-1-628. Hunters against hunger account. (1) There is a hunters against hunger account in the state special revenue fund established by 17-2-102. Funds deposited into this account must be used by the department for the purposes of 87-1-293.

(2) The following money must be deposited into the account:

(a) donations received pursuant to 87-1-293;

(b) interest earned on the account; and

(c) money received by the department in the form of gifts or grants or from any source intended to be used for the purposes of 87-1-293.

(3) Any money in the account that is unspent or unencumbered at the end of a fiscal year must remain in the account.

History: En. Sec. 2, Ch. 83, L. 2013.

87-1-629. Review of budget — report to legislature. In addition to the requirements of Title 17, chapter 7, part 1, every 4 years the department shall review its expenditures and revenue to determine the need for making license revenue recommendations to the legislature. The department shall report the findings of its review to the legislature in accordance with 5-11-210.

History: En. Sec. 1, Ch. 449, L. 2015; amd. Sec. 128, Ch. 261, L. 2021.

Cross-References

Budget Act, Title 17, ch. 7, part 1.

87-1-630. Supporting bowhunters with disabilities account. (1) There is a supporting bowhunters with disabilities account in the state special revenue fund established by 17-2-102. Funds deposited into this account must be used by the department for the purposes of 87-1-298.

(2) The following money must be deposited into the account:

(a) donations received pursuant to 87-1-298;

(b) interest earned on the account; and

(c) money received by the department in the form of gifts or grants or from any source intended to be used for the purposes of 87-1-298.

(3) Any money in the account that is unspent or unencumbered at the end of a fiscal year must remain in the account.

History: En. Sec. 2, Ch. 563, L. 2025.

Compiler's Comments

Effective Date: Section 6, Ch. 563, L. 2025, provided: "[This act] is effective July 1, 2025."

Part 7
State-Federal Relationships

Part Cross-References

Consent to purchase lands for migratory bird reservations — jurisdiction, 2-1-211.
Disposition of fees, 87-1-201, 87-1-601, 87-1-605, 87-2-204, 87-4-602.
Acquisition of lands or waters by Department, 87-1-209.
Power of Commission to establish wildlife refuges, 87-1-301.
Fish and game refuges, 87-1-305.

87-1-701. Assent to Dingell-Johnson Act. The congress of the United States passed an act that was approved on August 9, 1950, known as the Dingell-Johnson Act, Public Law 681, 81st congress, chapter 658, 2nd session, which provides, among other things, that "No money apportioned under this Act to any State, except as hereinafter provided, shall be expended therein until its legislature, or other State agency authorized by the State constitution to make laws governing the conservation of fish, shall have assented to the provisions of this Act and shall have passed laws for the conservation of fish, which shall include a prohibition against the diversion of license fees paid by fishermen for any other purpose than the administration of said State fish and game department, except that, until the final adjournment of the first regular session of the legislature held after passage of this Act, the assent of the governor of the State shall be sufficient." The money referred to in the Dingell-Johnson Act is collected in part from the anglers of the state of Montana and will not be returned to the state unless the state assents to the Dingell-Johnson Act. Therefore, the state of Montana assents to the Dingell-Johnson Act, but the assent is with the express reservations enumerated in 87-1-701 through 87-1-703. The state of Montana does not, by the passage of 87-1-701 through 87-1-703 or by the consent given in this section, surrender to the congress of the United States or any department of the government of the United States any of those rights that are retained by the people of the state of Montana or the state of Montana and that are guaranteed to them by the 9th and 10th amendments to the constitution of the United States, and 87-1-701 through 87-1-703 may not in any manner or at all be construed or held to be the state of Montana's consent to amending the constitution of the United States in any manner or at all relative to its rights. The title to all lands acquired under the provisions of 87-1-701 through 87-1-703 for fish restoration and management projects and projects constructed on those lands is and remains in the state.

History: **En. Sec. 1, Ch. 140, L. 1951; R.C.M. 1947, 26-1401; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 2840, Ch. 56, L. 2009; amd. Sec. 1, Ch. 69, L. 2013.**

87-1-702. Powers of department relating to fish restoration and management. The department is hereby authorized to perform such acts as may be necessary to the establishment and conduct of fish restoration and management projects as defined and authorized by the act of congress, provided every project initiated under the provisions of the act shall be under the supervision of the department, and no laws or rules or regulations shall be passed, made, or established relating to said fish restoration and management projects except they be in conformity with the laws of the state of Montana or rules promulgated by the department, and the title to all lands acquired or projects created from lands purchased or acquired by deed or gift shall vest in, be, there remain in the state of Montana and shall be operated and maintained by it in accordance with the laws of the state of Montana. The department shall have no power to accept benefits unless the fish restoration and management projects created or established shall wholly and permanently belong to the state of Montana, except as hereinafter provided.

History: **En. Sec. 2, Ch. 140, L. 1951; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1402.**

Cross-References

State Lands, Title 77.

87-1-703. Cooperative agreements on federally owned land. The department, in the name of the state and with the approval of the governor, shall have the power to enter into cooperative agreements on federally owned lands with the government of the United States or any department or bureau thereof or with an individual or individuals, private corporations, or partnerships for the purpose of carrying on any fish restoration projects created and established under the provisions of 87-1-701 through 87-1-703 and shall have the power to acquire by purchase, either by cash or upon installments, or lease or by gift or by devise or individually or in conjunction with the government of the United States or some department or bureau thereof such lands or other property or interest therein as may be necessary for the purpose of carrying on any fish restoration and management projects created and established under the provisions of said Dingell-Johnson bill of the congress of the United States, and the state does reserve to itself, acting through its legislature, the right to direct the department to abandon any fish restoration and management projects created and established as the state may in its judgment think proper. The department shall have no power to exercise the right of eminent domain to condemn or acquire property under 87-1-701 through 87-1-703.

History: En. Sec. 3, Ch. 140, L. 1951; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1403; amd. Sec. 5, Ch. 44, L. 1979.

87-1-704. Federal fish-hatching operations. The government of the United States, the United States commissioner of fisheries, and the government's or commissioner's authorized agents may conduct fish-hatching and all operations connected with fish-hatching, in any manner and at any time that may be considered necessary and proper by them at any United States fish cultural station established by the United States government in the state of Montana.

History: En. Sec. 1, Ch. 9, L. 1913; re-en. Sec. 3712, R.C.M. 1921; re-en. Sec. 3712, R.C.M. 1935; amd. Sec. 11, Ch. 9, L. 1977; R.C.M. 1947, 26-330; amd. Sec. 2841, Ch. 56, L. 2009.

87-1-705. Acquisition of land by United States for migratory bird reservation. Consent of the state of Montana is given to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land or water or of land and water in sections 31 and 32 in township 28 north of range 22 west; sections 4, 5, 8, 9, 16, 17, 18, 19, and 20 in township 27 north of range 22 west; sections 13, 14, 15, 16, 21, 22, 23, and 24 in township 27 north of range 23 west, in Flathead County, Montana, as the United States may deem necessary for the establishment of a migratory bird reservation in accordance with the act of congress approved February 18, 1929, entitled: "An Act to More Effectively Meet the Obligations of the United States Under the Migratory Bird Treaty with Great Britain by Lessening the Dangers Threatening Migratory Game Birds from Drainage and Other Causes by the Acquisition of Areas of Land and of Water to Furnish in Perpetuity Reservations for the Adequate Protection of Such Birds; and Authorizing Appropriations for the Establishment of Such Areas, Their Maintenance and Improvement and for Other Purposes", reserving, however, to the state of Montana full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection, and control thereof by the United States under the terms of said act of congress.

History: En. Sec. 1, Ch. 156, L. 1941; R.C.M. 1947, 26-1108.

87-1-706. Regulation of bird reserve in Flathead County. Upon the acquisition or establishment of any such refuge in Flathead County, state of Montana, the commission, acting under its authority to designate areas as resting, feeding, and breeding grounds for migratory and other species of birds and wild animals, shall in its discretion establish such areas as a state refuge and adopt such regulations not inconsistent with the regulations of the secretary of the United States department of agriculture governing such areas as it may deem necessary for their protection and may enter into cooperative agreements or arrangements with the secretary for the enforcement of the aforesaid act of congress and the regulations of the secretary of agriculture and for the maintenance and administration of such refuge.

History: En. Sec. 2, Ch. 156, L. 1941; R.C.M. 1947, 26-1109.

Cross-References

Game preserves and closed areas, Title 87, ch. 5, part 4.

87-1-707. Water supply for the Benton Lake wildlife refuge. Consent of the state of Montana is given to the acquisition by the United States by purchase, gift, devise, or lease of a canal right-of-way approximately 66 feet in width, together with an area not to exceed 10 acres as a site for a pumping station works, or of land and water within township 22 north, range 1 west; township 23 north, range 2 west; township 23 north, range 1 west; township 23 north, range 1 east; township 23 north, range 2 east, Teton County; township 22 north, range 1 east, Cascade County; and township 23 north, range 3 east, Chouteau County for the transportation of a supplemental water supply for the Benton Lake national wildlife refuge, Cascade County, established by Executive Order No. 5228, November 21, 1929, and as amended by Executive Order No. 2416, July 25, 1940, in accordance with the act of congress approved February 18, 1929, entitled: "An Act to More Effectively Meet the Obligations of the United States Under the Migratory Bird Treaty with Great Britain by Lessening the Dangers Threatening Migratory Game Birds from Drainage and Other Causes by the Acquisition of Areas of Land and of Water to Furnish in Perpetuity Reservations for the Adequate Protection of Such Birds; and Authorizing Appropriations for the Establishment of Such Areas, Their Maintenance and Improvement and for Other Purposes", reserving, however, to the state of Montana full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection, and control thereof by the United States under the terms of said act of congress.

History: En. Sec. 1, Ch. 227, L. 1953; R.C.M. 1947, 26-1108.1.

Cross-References

Interference with canal or ditch easements prohibited, 70-17-112.

87-1-708. Assent to Pittman-Robertson Act — authority of department. (1) The congress of the United States having passed an act which was approved on September 2, 1937, and which is known as 50 Federal Statutes 917 of the acts of congress, wherein it is, among other things, provided that "no money apportioned under this chapter to any state shall be expended therein until its legislature or other state agency authorized by the state constitution to make laws governing the conservation of wildlife shall have assented to the provisions of this chapter and shall have passed laws for the conservation of wildlife, which shall include a prohibition against the diversion of license fees paid by hunters for any other purpose than the administration of said department", and since the moneys referred to in the act of congress are collected in part from the hunters of this state and will not be returned to the state of Montana except the state of Montana does assent to the act, now, therefore, the state of Montana does assent to the provisions of said act of congress which is commonly known as the Pittman-Robertson bill, but such assent is with the express reservations enumerated in this section, 87-1-709, and 87-1-710. The state of Montana does not by the passage of these sections or by the consent herein given surrender to the congress of the United States or any department of the government of the United States any of those rights which are retained by the people of the state of Montana or the state of Montana and which are guaranteed to them by the 9th and 10th amendments to the constitution of the United States, nor shall this section, 87-1-709, and 87-1-710 in any manner or at all be construed or held to be the state of Montana's consent to amending the constitution of the United States in any manner or at all relative to its rights. Provided, however, that nothing herein shall be construed as giving consent to the purchase or acquisition of lands by the United States or by any of its departments or officers for establishing migratory bird sanctuaries under the Migratory Bird Conservation Act of the United States or otherwise and that the title to all lands acquired under the provisions of this section, 87-1-709, and 87-1-710 for wildlife projects and projects constructed thereon shall be and remain in the state of Montana.

(2) The department is hereby authorized to perform such acts as may be necessary to the establishment and conduct of wildlife projects as defined and authorized by said act of congress, provided every project initiated under the provisions of this section, 87-1-709, and 87-1-710 shall be under the supervision of the department, and no laws or rules or regulations shall be passed, made, or established governing the game or fur-bearing animals or the taking or capturing of the same in any such projects except they be in conformity with the laws of the state of Montana or rules promulgated by the department. The title to all lands acquired or projects created from lands purchased or acquired by deed or gift shall vest in, be, and remain in the state of Montana and shall be operated and maintained by it in accordance with the laws of the state of Montana. The department shall have no power to accept benefits unless the projects created or established shall wholly and permanently belong to the state of Montana, except as provided in 87-1-709. Nothing contained herein shall prevent the department from entering into cooperative agreements on federally owned lands as provided for herein.

History: (1)En. Sec. 1, Ch. 167, L. 1941; Sec. 26-1122, R.C.M. 1947; (2)En. Sec. 2, Ch. 167, L. 1941; amd. Sec. 1, Ch. 80, L. 1951; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-1123, R.C.M. 1947; R.C.M. 1947, 26-1122, 26-1123.

87-1-709. Cooperation with United States for wildlife restoration. The department, in the name of the state and with the approval of the governor, shall have the power to enter into the cooperative agreements on federally owned lands with the government of the United States or some department or bureau thereof or with an individual or individuals, private corporations, or partnerships for the purpose of carrying on any wildlife restoration project and established under the provisions of said Pittman-Robertson Act of the congress of the United States and shall have the power to acquire by purchase, either for cash or upon installments, or lease or by gift or devise, either individually or in conjunction with the government of the United States or some department or bureau thereof, such lands or other property or interests therein as may be necessary for the purpose of carrying on any wildlife restoration project created and established under the provisions of said Pittman-Robertson Act of the congress of the United States. The state of Montana does reserve to itself, acting through its legislature, the right to direct the department to abandon any wildlife restoration projects created and established as the state of Montana may in its judgment think proper, provided the department shall have no power to exercise the right of eminent domain to condemn or acquire property under 87-1-708 through 87-1-710.

History: En. Sec. 3, Ch. 167, L. 1941; amd. Sec. 2, Ch. 80, L. 1951; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1124.

87-1-710. Use of hunters' license fees for department purposes only. In accordance with the other requirement of said act of congress, it shall be the law of this state, so long as this assent shall be unrepealed, that no license fees paid by hunters in the state of Montana shall be used or taken for any other purpose than the administration and use of the department.

History: En. Sec. 4, Ch. 167, L. 1941; R.C.M. 1947, 26-1125.

87-1-711. Acquisition of land by United States for bison and other big game animals. Consent of the state of Montana is given to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land or water or of land and water in section 31, township 18 north, range 20 west, Lake County, Montana, and section 36, township 18 north, range 21 west, Sanders County, Montana, excepting the Northern Pacific railway and state of Montana lands within said sections, as the United States may deem necessary for the establishment of an exhibition park for bison and other big game animals, reserving, however, to the state of Montana full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection, and control thereof by the United States under the terms of applicable federal regulations.

History: En. Sec. 1, Ch. 209, L. 1953; R.C.M. 1947, 26-1126.

87-1-712. Development of national bison range. Upon the acquisition or establishment of any such park in Lake County and Sanders County, the fish and wildlife service, United States department of the interior, agrees to develop, improve, and maintain the park for the display of such native big game animals as are available on the national bison range.

History: En. Sec. 2, Ch. 209, L. 1953; R.C.M. 1947, 26-1127.

87-1-713. Federal waterfowl and wildlife area acquisitions — submission to affected county governing bodies for review. The governor, the department, or their agents, responsible under federal law for final approval of land, wetland, and water acquisitions in fee by the United States government or its agents for waterfowl protection areas or wildlife refuges, or the United States fish and wildlife service shall submit the proposed acquisitions to the governing body of each county in which all or part of the land, wetland, and water areas are proposed to be located for the governing body's recommendations.

History: En. Sec. 1, Ch. 309, L. 1979.

Cross-References

Consent to purchase lands for migratory bird reservations, 2-1-211.

87-1-714. Hearings on proposed waterfowl and wildlife area acquisitions. (1) The governing body of the county affected by a proposed federal acquisition of land under 87-1-713, the department, and the United States fish and wildlife service shall, within 21 days of receipt of an acquisition proposal, physically inspect the proposed acquisition areas, if the governing body deems such inspection appropriate.

(2) If requested by the governing body, the agencies described in subsection (1) shall hold a joint public hearing on the proposed acquisition and shall give public notice of the date, time, and place of the hearing. The hearing shall be held in the county in which the proposed acquisition is located. The hearing shall be held within 30 days of the governing body's receipt of the acquisition proposal. The notice shall be published once a week for 2 successive weeks in a

newspaper of general circulation in each county in which all or part of the proposed acquisition is located. The notice shall include the substance of the proposed action and a legal description of the proposed acquisitions.

History: **En. Sec. 2, Ch. 309, L. 1979.**

Part 8
Interstate Wildlife Violator Compact

Part Cross-References

Interstate fishing privileges, Title 87, ch. 2, part 10.

87-1-801. Compact adopted — text. The Interstate Wildlife Violator Compact is entered into by this state, with all other states legally joining therein, in the form substantially as follows:

INTERSTATE WILDLIFE VIOLATOR COMPACT
ARTICLE I
Findings, Declaration of Policy, and Purpose

(1) The participating states find that the following provisions apply:

(a) Wildlife resources are managed in trust by the respective states for the benefit of all residents and visitors.

(b) The protection of the wildlife resources of a state is materially affected by the degree of compliance with state statutes, laws, ordinances, regulations, and administrative rules relating to the management of such resources.

(c) The preservation, protection, management, and restoration of wildlife contributes immeasurably to the aesthetic, recreational, and economic aspects of such natural resources.

(d) Wildlife resources are valuable without regard to political boundaries; therefore, every person should be required to comply with wildlife preservation, protection, management and restoration laws, ordinances, regulations, and administrative rules of the participating states as a condition precedent to the continuance or issuance of any license to hunt, fish, trap, or possess wildlife.

(e) Violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of persons and property.

(f) The mobility of many wildlife law violators necessitates the maintenance of channels of communication among the various states.

(g) In most instances, a person who is cited for a wildlife violation in a state other than that person's own state:

(i) is required to post collateral or a bond to secure appearance for a trial at a later date;

(ii) is taken into custody until the collateral or bond is posted; or

(iii) is taken directly to court for an immediate appearance.

(h) The purpose of the enforcement practices set forth in subsection (1)(g) of this article is to ensure compliance with the terms of a wildlife citation by the cited person who, if permitted to proceed after receiving the citation, could return to the person's home state and disregard the person's duty under the terms of the citation.

(i) In most instances, a person receiving a wildlife citation in that person's home state is permitted to accept the citation from the officer at the scene of the violation and immediately proceed after agreeing or being instructed to comply with the terms of the citation.

(j) The practices described in subsection (1)(g) of this article cause unnecessary inconvenience and, at times, a hardship for the person who is unable at the time to post collateral, furnish a bond, stand trial, or pay a fine and is thus compelled to remain in custody until some alternative arrangement is made.

(k) The enforcement practices described in subsection (1)(g) of this article consume an undue amount of law enforcement time.

(2) It is the policy of the participating states to:

(a) promote compliance with the statutes, laws, ordinances, regulations, and administrative rules relating to management of wildlife resources in their respective states;

(b) recognize the suspension of wildlife license privileges of any person whose license privileges have been suspended by a participating state and treat such suspension as if it had occurred in their state;

(c) allow a violator, except as provided in subsection (2) of Article III, to accept a wildlife citation and proceed without delay, whether or not a resident of the state in which the citation was issued, provided that the violator's home state is party to this compact;

(d) report to the appropriate participating state, as provided in the compact manual, any conviction recorded against any person whose home state was not the issuing state;

(e) allow the home state to recognize and treat convictions recorded against its residents, which convictions occurred in a participating state, as though they occurred in the home state;

(f) extend cooperation to its fullest extent among the participating states for enforcing compliance with the terms of a wildlife citation issued in one participating state to a resident of another participating state;

(g) maximize effective use of law enforcement personnel and information;

(h) assist court systems in the efficient disposition of wildlife violations.

(3) The purpose of this compact is to:

(a) provide a means through which participating states may join in a reciprocal program to effectuate the policies enumerated in subsection (2) of this article in a uniform and orderly manner;

(b) provide for the fair and impartial treatment of wildlife violators operating within participating states in recognition of the violator's right to due process and the sovereign status of a participating state.

ARTICLE II
Definitions

As used in this compact and 87-1-802 through 87-1-805, unless the context requires otherwise, the following definitions apply:

(1) "Citation" means any summons, complaint, summons and complaint, ticket, penalty assessment, or other official document that is issued to a person by a wildlife officer or other peace officer for a wildlife violation and that contains an order requiring the person to respond.

(2) "Collateral" means any cash or other security deposited to secure an appearance for trial in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.

(3) "Compliance" with respect to a citation means the act of answering a citation through an appearance in a court or tribunal, or through the payment of fines, costs, and surcharges, if any.

(4) "Conviction" means a conviction, including any court conviction, for any offense that is related to the preservation, protection, management, or restoration of wildlife and that is prohibited by state statute, law, regulation, ordinance, or administrative rule. Such conviction shall also include the forfeiture of any bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, the payment of a penalty assessment, a plea of nolo contendere and the imposition of a deferred or suspended sentence by the court.

(5) "Court" means a court of law, including magistrate's court and the justice of the peace court.

(6) "Home state" means the state of primary residence of a person.

(7) "Issuing state" means the participating state which issues a wildlife citation to the violator.

(8) "License" means any license, permit, or other public document which conveys to the person to whom it was issued the privilege of pursuing, possessing, or taking any wildlife regulated by statute, law, regulation, ordinance, or administrative rule of a participating state.

(9) "Licensing authority" means the department or division within each participating state which is authorized by law to issue or approve licenses or permits to hunt, fish, trap, or possess wildlife.

(10) "Participating state" means any state which enacts legislation to become a member of this wildlife compact.

(11) "Personal recognizance" means an agreement by a person made at the time of issuance of the wildlife citation that such person will comply with the terms of the citation.

(12) "State" means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Provinces of Canada, and other countries.

(13) "Suspension" means any revocation, denial, or withdrawal of any or all license privileges, including the privilege to apply for, purchase, or exercise the benefits conferred by any license.

(14) "Terms of the citation" means those conditions and options expressly stated in the citation.

(15) "Wildlife" means all species of animals including but not limited to mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, which are defined as "wildlife" and are protected or otherwise regulated by statute, law, regulation, ordinance, or administrative rule in a participating state. Species included in the definition of "wildlife" vary from state to state, and determination of whether a species is "wildlife" for purposes of this compact shall be based on state or local law.

(16) "Wildlife law" means any statute, law, regulation, ordinance, or administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

(17) "Wildlife officer" means any individual authorized by a participating state to issue a citation for a wildlife violation.

(18) "Wildlife violation" means any cited violation of a statute, law, regulation, ordinance, or administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

ARTICLE III
Procedures for Issuing State

(1) When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a participating state in the same manner as though the person were a resident of the issuing state and shall not require such person to post collateral to secure appearance, subject to the exceptions noted in subsection (2) of this article, if the officer receives the recognizance of such person that the person will comply with the terms of the citation.

(2) Personal recognizance is acceptable:

(a) if not prohibited by state or local law or the compact manual; and

(b) if the violator provides adequate proof of identification to the wildlife officer.

(3) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the participating state in which the wildlife citation was issued. The report shall be made in accordance with procedures specified by the issuing state and shall contain information as specified in the compact manual as minimum requirements for effective processing by the home state.

(4) Upon receipt of the report of conviction or noncompliance pursuant to subsection (3) of this article, the licensing authority of the issuing state shall transmit to the licensing authority of the home state of the violator the information in form and content as prescribed in the compact manual.

ARTICLE IV
Procedure for Home State

(1) Upon receipt of a report from the licensing authority of the issuing state reporting the failure of a violator to comply with the terms of a citation, the licensing authority of the home state shall notify the violator and shall initiate a suspension action in accordance with the home state's suspension procedures and shall suspend the violator's license privileges until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process safeguards will be accorded.

(2) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter such conviction in its records and shall treat such conviction as though it occurred in the home state for the purposes of the suspension of license privileges.

(3) The licensing authority of the home state shall maintain a record of actions taken and shall make reports to issuing states as provided in the compact manual.

ARTICLE V
Reciprocal Recognition of Suspension

(1) All participating states shall recognize the suspension of license privileges of any person by any participating state as though the violation resulting in the suspension had occurred in their state and could have been the basis for suspension of license privileges in their state.

(2) Each participating state shall communicate suspension information to other participating states in form and content as contained in the compact manual.

ARTICLE VI
Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing herein shall be construed to affect the right of any participating state to apply any of its laws relating to license privileges to any person or circumstance or to invalidate or prevent any agreement or other cooperative arrangement between a participating state and a nonparticipating state concerning wildlife law enforcement.

ARTICLE VII
Compact Administrator — Procedures

(1) For the purposes of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall be composed of one representative from each of the participating states, to be known as the compact administrator. The compact administrator shall be appointed by the head of the licensing authority of each participating state and shall serve and be subject to removal in accordance with the laws of the state the compact administrator represents. A compact administrator may provide for the discharge of duties and the performance of functions as a board member by an alternate. An alternate shall not be entitled to serve unless written notification of the identity of the alternate has been given to the board.

(2) Each member of the board of compact administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of the board's votes are cast in favor thereof. Action by the board shall be only at a meeting at which a majority of the participating states are represented.

(3) The board shall elect annually from its membership a presiding officer and a vice presiding officer.

(4) The board shall adopt bylaws not inconsistent with the provisions of this compact or the laws of a participating state for the conduct of its business and shall have the power to amend and rescind its bylaws.

(5) The board may accept for any of its purposes and functions under this compact any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any governmental agency, and receive, utilize, and dispose of same.

(6) The board may contract with, or accept services or personnel from, any governmental or intergovernmental agency, individual, firm, or corporation, or any private nonprofit organization or institution.

(7) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in a compact manual.

ARTICLE VIII
Entry Into Compact and Withdrawal

(1) This compact shall become effective at such time as it is adopted in a substantially similar form by two or more states.

(2) (a) Entry into the compact shall be made by resolution of ratification executed by the authorized officials of the applying state and submitted to the presiding officer of the board.

(b) The resolution shall substantially be in the form and content as provided in the compact manual and shall include the following:

(i) a citation of the authority from which the state is empowered to become a party to this compact;

(ii) an agreement of compliance with the terms and provisions of this compact; and

(iii) an agreement that compact entry is with all states participating in the compact and with all additional states legally becoming a party to the compact.

(c) The effective date of entry shall be specified by the applying state but shall not be less than 60 days after notice has been given:

(i) by the presiding officer of the board of the compact administrators; or

(ii) by the secretariat of the board to each participating state that the resolution from the applying state has been received.

(3) A participating state may withdraw from participation in this compact by official written notice to each participating state, but withdrawal shall not become effective until 90 days after the notice of withdrawal is given. The notice shall be directed to the compact administrator of each member state. No withdrawal of any state shall affect the validity of this compact as to the remaining participating states.

ARTICLE IX
Amendments to the Compact

(1) This compact may be amended from time to time. Amendments shall be presented in resolution form to the presiding officer of the board of the compact administrators and shall be initiated by one or more participating states.

(2) Adoption of an amendment shall require endorsement by all participating states and shall become effective 30 days after the date of the last endorsement.

(3) Failure of a participating state to respond to the compact presiding officer within 120 days after receipt of a proposed amendment shall constitute endorsement thereof.

ARTICLE X
Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or the United States, or the applicability thereof to any government, agency, individual, or circumstance is held invalid, the validity of the remainder of the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any participating state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the participating state affected as to all severable matters.

History: En. Sec. 1, Ch. 122, L. 1995.

87-1-802. Department authorization to effect purposes of compact. (1) The department shall enforce the Interstate Wildlife Violator Compact and shall do all things within the department's jurisdiction that are appropriate in order to effectuate the purposes and the intent of the compact.

(2) The department is authorized on behalf of the state of Montana to enter into or withdraw from the Interstate Wildlife Violator Compact pursuant to the terms of Article VIII of the compact.

(3) The department is authorized to adopt amendments to the Interstate Wildlife Violator Compact pursuant to the terms of Article IX of the compact.

History: En. Sec. 2, Ch. 122, L. 1995.

87-1-803. Reciprocal recognition of license suspensions — suspension of privileges for conviction in participating state. (1) When the department receives notice of the suspension of a person's hunting, trapping, or fishing privileges by a participating state, the department shall determine whether the violation leading to the suspension could have led to the forfeiture of privileges under Montana law. If the department determines that the person's privileges could have been forfeited, the department shall suspend the person's privileges to hunt, trap, or fish in Montana for the same period as imposed by the participating state or for the minimum period that would have been imposed under Montana law, whichever period is longer.

(2) When the department receives notice of a conviction of a Montana resident from the licensing authority of the issuing state, the department shall treat the conviction as if it had occurred in Montana and shall determine whether the conviction could have led to the forfeiture of the resident's hunting, trapping, or fishing privileges under Montana law. If the department determines that the resident's privileges could have been forfeited, the department shall suspend the resident's privileges to hunt, trap, or fish in Montana for the minimum period that would have been imposed under Montana law.

(3) Notice of the suspension must be sent to the person, who shall surrender any current Montana hunting, trapping, and fishing licenses to the department within 10 days.

History: En. Sec. 3, Ch. 122, L. 1995; amd. Sec. 7, Ch. 502, L. 1999; amd. Sec. 89, Ch. 258, L. 2011.

87-1-804. Suspension of privileges for failure to comply with citation issued in participating state. (1) The department shall suspend the hunting, trapping, or fishing privileges of any resident of Montana upon notification from the licensing authority of an issuing state that the resident has failed to comply with the terms of a citation issued for a wildlife violation. The suspension remains in effect until the department receives satisfactory evidence of compliance from the issuing state.

(2) Notice of the suspension must be sent to the resident, who shall surrender all current Montana hunting, trapping, and fishing licenses to the department within 10 days.

History: En. Sec. 4, Ch. 122, L. 1995; amd. Sec. 8, Ch. 502, L. 1999; amd. Sec. 90, Ch. 258, L. 2011.

87-1-805. Hearing on suspension. (1) Upon suspending the hunting, trapping, or fishing privileges of any person under 87-1-803 or 87-1-804, the department shall immediately notify the person in writing. The person may, within 20 days of the notice, request a hearing before the department on whether the requirements for suspension have been met. The hearing must be informal.

(2) Upon request, the department shall set a hearing as early as practicable.

(3) (a) The requesting person may present evidence and arguments at the hearing contesting whether:

(i) a participating state suspended the person's privileges;

(ii) there was a conviction in the participating state;

(iii) the person failed to comply with the terms of a citation issued for a wildlife violation in a participating state; or

(iv) a conviction in a participating state could have led to the forfeiture of privileges under Montana law.

(b) Grounds other than those listed in subsection (3)(a) may not be used to contest the department's decision to suspend the person's privileges.

(4) At the hearing, the department, through its authorized agent, may:

(a) administer oaths;

(b) issue subpoenas for the attendance of witnesses; and

(c) admit all relevant evidence and documents, including notifications from participating states.

(5) Following the hearing, the department, through its authorized agent, may, based on the evidence, affirm, modify, or rescind the suspension of privileges.

History: En. Sec. 5, Ch. 122, L. 1995.

Part 9
Gray Wolf Management

87-1-901. Gray wolf management — rulemaking — reporting. (1) Except as provided in subsection (3), the commission shall establish by rule hunting and trapping seasons for wolves with the intent to reduce the wolf population in this state to a sustainable level, but not less than the number of wolves necessary to support at least 15 breeding pairs. Trapping seasons must allow for the use of snares by the holder of a trapping license.

(2) For game management purposes, the commission shall apply different management techniques depending on the conditions in each administrative region, with the most liberal harvest regulations applied in regions with the greatest number of wolves. In doing so, the commission may authorize:

(a) the issuance of more than one Class E-1 or Class E-2 wolf hunting license to an applicant;

(b) the trapping or snaring of more than one wolf by the holder of a trapping license;

(c) the harvest of an unlimited number of wolves by the holder of a single wolf hunting or wolf trapping license;

(d) during the wolf trapping season, the use of bait while hunting or trapping wolves as long as no trap or snare trap is set within 30 feet of exposed bait visible from above; and

(e) the hunting of wolves on private lands outside of daylight hours with the use of artificial light, night vision scopes, infrared scopes, or thermal imagery scopes.

(3) The commission shall adopt rules to allow a landowner or the landowner's agent to take a wolf on the landowner's property at any time without the purchase of a Class E-1 or Class E-2 wolf license when the wolf is a potential threat to human safety, livestock, or dogs. The rules must:

(a) be consistent with the Montana gray wolf conservation and management plan and the adaptive management principles of the commission and the department for the Montana gray wolf population;

(b) require a landowner or the landowner's agent who takes a wolf pursuant to this subsection (3) to promptly report the taking to the department and to preserve the carcass of the wolf;

(c) establish a quota each year for the total number of wolves that may be taken pursuant to this subsection (3); and

(d) allow the commission to issue a moratorium on the taking of wolves pursuant to this subsection (3) before a quota is reached if the commission determines that circumstances require a limitation of the total number of wolves taken.

(4) Public land permittees who have experienced livestock depredation must obtain a special kill permit authorized in 87-5-131(3)(b) to take a wolf on public land without the purchase of a Class E-1 or Class E-2 license.

(5) The department shall report annually to the environmental quality council in accordance with 5-11-210 regarding the implementation of 87-5-131, 87-5-132, and this section.

History: En. Sec. 1, Ch. 297, L. 2013; amd. Sec. 1, Ch. 162, L. 2021; amd. Sec. 129, Ch. 261, L. 2021; amd. Sec. 1, Ch. 336, L. 2021; amd. Sec. 1, Ch. 432, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 432, L. 2025. Amendment effective September 29, 2025.

2025 Correction: A Senate committee amended House Bill No. 259 (now Ch. 432, L. 2025). The amended version was approved by the Senate and concurred in by the House. During the enrolling process, a failed House amendment was incorrectly engrossed into the bill. This incorrect version was sent to and signed by the Governor. Subsequently, the corrected version was delivered to the Governor on September 23, 2025, and signed by the Governor on September 29, 2025.

Effective Date: Section 2, Ch. 432, L. 2025, provided: "[This act] is effective on passage and approval." Chapter 432 was revised through correction on September 29, 2025; see 2025 Correction compiler's comment.

CHAPTER 2

FISHING, HUNTING, AND TRAPPING LICENSES

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Chapter Cross-References

Criminal jurisdiction, 3-10-303.
Discrimination in license issuance prohibited, 49-3-204.
License and permit revocation and denial — penalty, 87-5-721.

Part 1
General Provisions

87-2-101. Definitions. As used in Title 87, chapter 3, and this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Angling" or "fishing" means to take or harvest fish or the act of a person possessing any instrument, article, or substance for the purpose of taking or harvesting fish in any location that a fish might inhabit.

(2) (a) "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds.

(b) The term does not include:

(i) decoys, silhouettes, or other replicas of wildlife body forms;

(ii) scents used only to mask human odor; or

(iii) types of scents that are approved by the commission for attracting game animals or game birds.

(3) "Fur-bearing animals" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

(4) "Game animals" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

(5) "Game fish" means all species of the family Salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus Sander (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus Esox (northern pike, pickerel, and muskellunge); all species of the genus Micropterus (bass); all species of the genus Polyodon (paddlefish); all species of the family Acipenseridae (sturgeon); all species of the genus Lota (burbot or ling); the species Perca flavescens (yellow perch); all species of the genus Pomoxis (crappie); and the species Ictalurus punctatus (channel catfish).

(6) "Hunt" means to pursue, shoot, wound, take, harvest, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, taking, harvesting, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take or harvest by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

(7) "Migratory game birds" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; Wilson's snipes or jacksnipes; and mourning doves.

(8) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

(9) "Open season" means the time during which game birds, game fish, game animals, and fur-bearing animals may be lawfully taken.

(10) "Person" means an individual, association, partnership, or corporation.

(11) "Predatory animals" means coyote, weasel, skunk, and civet cat.

(12) "Shed hunt" or "shed hunting" means to collect the naturally shed antlers or horns of elk, deer, and antelope and the antlers or horns of a game animal, except for mountain sheep as provided in 87-3-315, with a skull or a portion of a skull attached that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed.

(13) "Trap" means to take or harvest or participate in the taking or harvesting of any wildlife protected by the laws of the state by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

(14) "Upland game birds" means sharp-tailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

(15) "Wild buffalo or bison" or "wild buffalo" means a bison that:

(a) has not been reduced to captivity;

(b) has never been subject to the per capita fee under 15-24-921;

(c) has never been owned by a person; and

(d) is not the offspring of a bison that has been subject to the per capita fee under 15-24-921.

History: En. Sec. 1, Ch. 238, L. 1921; re-en. Sec. 3681, R.C.M. 1921; amd. Sec. 3, Ch. 77, L. 1923; amd. Sec. 12, Ch. 192, L. 1925; amd. Sec. 6, Ch. 59, L. 1927; re-en. Sec. 3681, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1949; amd. Sec. 1, Ch. 36, L. 1951; amd. Sec. 1, Ch. 121, L. 1951; amd. Sec. 1, Ch. 19, L. 1953; amd. Sec. 1, Ch. 34, L. 1959; amd. Sec. 1, Ch. 11, L. 1965; amd. Sec. 1, Ch. 28, L. 1965; amd. Sec. 1, Ch. 46, L. 1971; amd. Sec. 1, Ch. 189, L. 1971; amd. Sec. 1, Ch. 167, L. 1973; amd. Sec. 1, Ch. 27, L. 1974; amd. Sec. 1, Ch. 67, L. 1975; amd. Sec. 1, Ch. 93, L. 1975; amd. Sec. 1, Ch. 113, L. 1975; amd. Sec. 1, Ch. 235, L. 1977; R.C.M. 1947, 26-201; amd. Sec. 6, Ch. 44, L. 1979; amd. Sec. 1, Ch. 46, L. 1979; amd. Sec. 1, Ch. 478, L. 1979; amd. Sec. 1, Ch. 420, L. 1983; amd. Sec. 1, Ch. 568, L. 1985; amd. Sec. 2, Ch. 28, L. 1991; amd. Sec. 5, Ch. 417, L. 1995; amd. Sec. 1, Ch. 84, L. 2003; amd. Sec. 1, Ch. 499, L. 2003; amd. Sec. 43, Ch. 19, L. 2011; amd. Sec. 91, Ch. 258, L. 2011; amd. Sec. 2, Ch. 105, L. 2015; amd. Sec. 3, Ch. 507, L. 2021; amd. Sec. 3, Ch. 748, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 748, L. 2025. Amendment effective October 1, 2025.

Cross-References

Fixing of seasons and limits on game, birds, fish, or fur-bearing animals, 87-1-304.

Closed season on certain game birds, 87-3-403.

87-2-102. Resident defined. In determining whether a person is a resident for the purpose of issuing resident hunting, fishing, and trapping licenses, the following provisions apply:

(1) (a) A member of the regular armed forces of the United States, a member's spouse or dependent, as defined in subsection (1)(c), who resides in the member's household, or a member of the armed forces of a foreign government attached to the regular armed forces of the United States is considered a resident for the purposes of this chapter if:

(i) the member was a resident of Montana under the provisions of subsection (4) and continues to meet the residency criteria of subsections (4)(b) through (4)(e); or

(ii) the member is currently stationed in and assigned to active duty in Montana, has resided in Montana for at least 30 days, and presents official assignment orders and proof of completion of a hunter safety and education course approved by the department, as provided in 87-2-105, a certificate verifying the successful completion of a hunter safety course in any state or province, or, if applicable, proof of completion of a trapper education course pursuant to 87-2-127. The 30-day residence requirement is waived in time of war. Reassignment to another state, United States territory, or country terminates Montana residency for purposes of this section, except that a reassigned member continues to qualify as a resident if the member's spouse and dependents continue to physically reside in Montana and the member continues to meet the residency criteria of subsections (4)(b) through (4)(e). The designation of Montana by a member of the regular armed forces as a "home of record" or "home of residence" in that member's armed forces records does not determine the member's residency for purposes of this section.

(b) A member of the regular armed forces of the United States who is otherwise considered a Montana resident pursuant to subsection (1)(a)(i) does not forfeit that status as a resident because the member, by virtue of that membership, also possesses, has applied for, or has received resident hunting, fishing, or trapping privileges in another state or country.

(c) The term "dependent" means any of the following individuals over half of whose support was received from the member:

(i) a son or daughter of the taxpayer or a descendant of either;

(ii) a stepson or stepdaughter of the taxpayer;

(iii) a brother, sister, stepbrother, or stepsister of the taxpayer;

(iv) the father or mother of the taxpayer or an ancestor of either;

(v) a stepfather or stepmother of the taxpayer;

(vi) a son or daughter of a brother or sister of the taxpayer;

(vii) a brother or sister of the father or mother of the taxpayer;

(viii) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer;

(ix) an individual who, for the tax year of the taxpayer, has as the individual's principal place of abode the home of the taxpayer and is a member of the taxpayer's household; or

(x) an individual who:

(A) is a descendant of a brother or sister of the father or mother of the taxpayer;

(B) for the tax year of the taxpayer, received institutional care required by reason of a physical or mental disability; and

(C) before receiving the institutional care, was a member of the same household as the taxpayer.

(d) For purposes of this section:

(i) the terms "brother" and "sister" include a brother or sister by the half blood; and

(ii) in determining whether any of the relationships specified in this section exist, a legally adopted child of an individual must be treated as a child of the individual by blood.

(2) A person who has physically resided in Montana as the person's principal or primary home or place of abode for 180 consecutive days and who meets the criteria of subsection (4) immediately before making application for any license is eligible to receive resident hunting, fishing, and trapping licenses. As used in this section, a vacant lot or a premises used solely for business purposes is not considered a principal or primary home or place of abode.

(3) A person who obtains residency under subsection (2) may continue to be a resident for purposes of this section by physically residing in Montana as the person's principal or primary home or place of abode for not less than 120 days a year and by meeting the criteria of subsection (4) prior to making application for any resident hunting, fishing, or trapping license.

(4) In addition to the requirements of subsection (2) or (3), a person shall meet the following criteria to be considered a resident for purposes of this section:

(a) the person's principal or primary home or place of abode is in Montana;

(b) the person files Montana state income tax returns as a resident if required to file;

(c) the person licenses and titles in Montana as required by law any vehicles that the person owns and operates in Montana;

(d) except as provided in subsection (1)(b), the person does not possess or apply for any resident hunting, fishing, or trapping licenses from another state or country or exercise resident hunting, fishing, or trapping privileges in another state or country; and

(e) if the person registers to vote, the person registers only in Montana.

(5) A student who is enrolled full-time in a postsecondary educational institution out of state and who would qualify for Montana resident tuition or who otherwise meets the residence requirements of subsection (2) or (3) is considered a resident for purposes of this section.

(6) An enrollee of a job corps camp located within the state of Montana is, after a period of 30 days within Montana, considered a resident for the purpose of making application for a fishing license as long as the person remains an enrollee in a Montana camp.

(7) A person who does not reside in Montana but who meets all of the following requirements is a resident for purposes of obtaining hunting and fishing licenses:

(a) The person's principal employment is within this state and the income from this employment is the principal source of the applicant's family income.

(b) The person is required to pay and has paid Montana income tax in a timely manner and proper amount.

(c) The person has been employed within this state on a full-time basis for at least 12 consecutive months immediately preceding each application.

(d) The person's state of residency has laws substantially similar to this subsection (7).

(8) An unmarried minor is considered a resident for the purposes of this section if the minor's parents, legal guardian, or parent with joint custody, sole custody, or visitation rights is a resident for purposes of this section. The minor is considered a resident for purposes of this section regardless of whether the minor resides primarily in the state or otherwise qualifies as a resident. The resident parent or guardian of the minor may be required to show proof of the parental, guardianship, or custodial relationship to the minor.

(9) A person is not considered a resident for the purposes of this section if the person:

(a) claims residence in any other state or country for any purpose; or

(b) is an absentee property owner paying property tax on property in Montana.

(10) A license agent is not considered a representative of the state for the purpose of determining a license applicant's residence status.

History: En. Sec. 3, Ch. 267, L. 1955; amd. Sec. 1, Ch. 106, L. 1959; amd. Sec. 1, Ch. 72, L. 1961; amd. Sec. 1, Ch. 28, L. 1963; amd. Sec. 1, Ch. 33, L. 1967; amd. Sec. 1, Ch. 37, L. 1967; amd. Sec. 1, Ch. 283, L. 1973; R.C.M. 1947, 26-202.3; amd. Sec. 2, Ch. 478, L. 1979; amd. Sec. 1, Ch. 494, L. 1983; amd. Sec. 1, Ch. 322, L. 1985; amd. Sec. 1, Ch. 321, L. 1991; amd. Sec. 1, Ch. 219, L. 1993; amd. Sec. 2, Ch. 589, L. 1993; amd. Sec. 7, Ch. 417, L. 1995; amd. Sec. 1, Ch. 187, L. 1997; amd. Sec. 4, Ch. 499, L. 1999; amd. Sec. 1, Ch. 60, L. 2001; amd. Sec. 1, Ch. 41, L. 2017; amd. Sec. 3, Ch. 170, L. 2021; amd. Sec. 62, Ch. 503, L. 2021.

Cross-References

State parks — fees and charges, 23-1-105.
Resident not required to pay primitive parks user fee, 23-1-118.
Outfitters and guides — resident Montana hunting or fishing license, 37-47-101.
Application for license, 87-2-106.
False statement in license application, 87-6-302.

87-2-103. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 2, Ch. 238, L. 1921; re-en. Sec. 3682, R.C.M. 1921; amd. Sec. 13, Ch. 192, L. 1925; amd. Sec. 7, Ch. 59, L. 1927; amd. Sec. 3, Ch. 224, L. 1947; amd. Sec. 27, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202; amd. Sec. 1, Ch. 255, L. 1979; amd. Sec. 1, Ch. 49, L. 1993; amd. Sec. 8, Ch. 417, L. 1995; amd. Sec. 1, Ch. 80, L. 2003.

87-2-104. Number of licenses, permits, or tags allowed — fees. (1) The department may prescribe rules and regulations for the issuance or sale of a replacement license, permit, or tag if the original license, permit, or tag is lost, stolen, or destroyed upon payment of a fee not to exceed $5.

(2) The department shall issue a replacement license, permit, or tag to a person who lawfully harvested a game animal but the meat of the animal was determined by the department to be unfit for human consumption due to disease or prior injury. To obtain a replacement license, permit, or tag pursuant to this subsection, the person:

(a) shall surrender the entire animal determined to be unfit for human consumption; and

(b) may choose to be issued the replacement for the same license year or the next license year.

(3) When authorized by the commission for game management purposes, the department may:

(a) issue more than one Class A-3 resident deer A, Class A-4 resident deer B, Class B-7 nonresident deer A, Class E-1 resident wolf, Class E-2 nonresident wolf, or special antelope license to an applicant;

(b) issue a special antlerless moose license, a special cow or calf bison license, or one or more special adult ewe mountain sheep licenses to an applicant; and

(c) issue one or more Class A-9 resident antlerless elk B tag licenses or Class B-12 nonresident antlerless elk B tag licenses to an applicant. Unless otherwise reduced pursuant to subsection (6), the fee for a Class B-12 license is $270.

(4) For all of the game management licenses issued under subsection (3), the commission shall determine the hunting districts or portions of hunting districts for which the licenses are to be issued, the number of licenses to be issued, and all terms and conditions for the use of the licenses.

(5) Unless otherwise determined by the commission, a holder of a valid Class B-10 nonresident big game combination license or a valid Class B-11 nonresident deer combination license may purchase up to two Class B-8 nonresident deer B tags while other eligible persons

may purchase only one. The commission shall determine the hunting districts or portions of hunting districts for which the tags are valid and all terms and conditions for the use of the tags.

(6) The fee for a resident or nonresident license of any class issued under subsections (3) and (5) may be reduced annually by the department.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(17); amd. Sec. 1, Ch. 99, L. 1979; amd. Sec. 1, Ch. 554, L. 1981; amd. Sec. 2, Ch. 494, L. 1983; amd. Sec. 1, Ch. 237, L. 1987; amd. Sec. 2, Ch. 431, L. 1989; amd. Sec. 1, Ch. 201, L. 2003; amd. Sec. 3, Ch. 228, L. 2003; amd. Sec. 8, Ch. 553, L. 2003; amd. Sec. 2, Ch. 470, L. 2005; amd. Sec. 1, Ch. 25, L. 2007; amd. Sec. 1, Ch. 35, L. 2007; amd. Sec. 92, Ch. 258, L. 2011; amd. Sec. 2, Ch. 13, L. 2013; amd. Sec. 2, Ch. 297, L. 2013; amd. Sec. 6, Ch. 449, L. 2015; amd. Sec. 1, Ch. 381, L. 2019; amd. Sec. 1, Ch. 166, L. 2021; amd. Sec. 1, Ch. 404, L. 2023.

Cross-References

When number may be restricted, 87-1-304.
Limit on Class B-10 licenses, 87-2-505.
Restrictions on hunting licenses, 87-2-506.
Limit on Class B-11 licenses, 87-2-510.

87-2-105. Hunter safety and education required. (1) Except for a youth who qualifies for a license pursuant to 87-2-805(4) or (5) or a person who has been issued an apprentice certificate pursuant to 87-2-810, a hunting license may not be issued to a person born after January 1, 1985, unless the person authorized to issue the license determines proof of completion of:

(a) a Montana hunter safety and education course established in subsection (4) or (6);

(b) a hunter safety course in any other state or province; or

(c) a Montana hunter safety and education course that qualifies the person for a provisional certificate as provided in 87-2-126.

(2) A hunting license may not be issued to a member of the regular armed forces of the United States or to a member of the armed forces of a foreign government attached to the armed forces of the United States who is assigned to active duty in Montana and who is otherwise considered a resident under 87-2-102(1) or to a member's spouse or dependent, as defined in 87-2-102, who resides in the member's household, unless the person authorized to issue the license determines proof of completion of a hunter safety and education course approved by the department or a hunter safety course in any state or province.

(3) A bow and arrow license may not be issued to a resident or nonresident unless the person authorized to issue the license receives an archery license issued for a prior hunting season or determines proof of completion of a bowhunter education course from the national bowhunter education foundation or any other bowhunter education program approved by the department. Neither the department nor the license agent is required to provide records of past archery license purchases. As part of the department's bow and arrow licensing procedures, the department shall notify the public regarding bowhunter education requirements.

(4) The department shall provide for a hunter safety and education course that includes instruction in the safe handling of firearms and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of hunter safety and education. The department may designate as an instructor any person it finds to be competent to give instructions in hunter safety and education, including the handling of firearms. A person appointed shall give the course of instruction and shall issue a certificate of completion from Montana's hunter safety and education course to a person successfully completing the course.

(5) The department shall provide for a course of instruction from the national bowhunter education foundation or any other bowhunter education program approved by the department and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of bow hunting tackle. The department may designate as an instructor any person it finds to be competent to give bowhunter education instruction. A person appointed shall give the course of instruction and shall issue a certificate of completion to a person successfully completing the course.

(6) The department may develop an adult hunter safety and education course.

(7) The department may adopt rules regarding how a person authorized to issue a license determines proof of completion of a required course.

History: **En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(2)(a), (part(6)); amd. Sec. 1, Ch. 210, L. 1987; amd. Sec. 1, Ch. 217, L. 1991; amd. Sec. 2, Ch. 219, L. 1993; amd. Sec. 2, Ch. 187, L. 1997; amd. Sec. 5, Ch. 499, L. 1999; amd. Sec. 2, Ch. 80, L. 2003; amd. Sec. 1, Ch. 433, L. 2003; amd. Sec. 1, Ch. 80, L. 2005; amd. Sec. 2, Ch. 68, L. 2009; amd. Sec. 7, Ch. 449, L. 2015; amd. Sec. 2, Ch. 41, L. 2017; amd. Sec. 1, Ch. 427, L. 2017; amd. Sec. 4, Ch. 170, L. 2021; amd. Sec. 63, Ch. 503, L. 2021; amd. Sec. 1, Ch. 44, L. 2025; amd. Sec. 1, Ch. 729, L. 2025.**

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 1, Ch. 44, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 729, L. 2025. Amendment effective October 1, 2025.

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Apprentice certificate, 87-2-810.

87-2-106. Application for license. (1) A license may be procured from the director, a warden, or an authorized agent of the director. The applicant shall state the applicant's name, age, [last four digits of the applicant's social security number,] street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and other facts, data, or descriptions as may be required by the department. An applicant for a resident license shall present a valid Montana driver's license, Montana driver's examiner's identification card, tribal identification card, or other identification specified by the department to substantiate the required information. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a license. Except as provided in subsections (2) through (4), the statements made by the applicant must be subscribed to by the applicant.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by telephone, by mail, on the internet, or by other electronic means.

(3) To apply for a license under the provisions of 87-2-102(7), the applicant shall apply to the director and shall subscribe to fulfillment of the requirements of 87-2-102(7). The director shall process the application in an expedient manner.

(4) A resident may apply for and purchase a conservation license, hunting license, or fishing license for the resident's spouse, parent, child, brother, or sister who is otherwise qualified to obtain the license.

(5) A license is void unless subscribed to by the licensee.

(6) A person whose privilege to hunt, fish, or trap has been revoked is not eligible to purchase any license until all terms of the court sentence in which the privilege was revoked, including making restitution, have been met or the person is in compliance with installment payments specified by the court and the department has received notification from the sentencing court to that effect pursuant to 87-6-922(2).

[(7) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(8) The department shall delete an applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. *(Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001.)*

History: **En. Sec. 4, Ch. 238, L. 1921; re-en. Sec. 3684, R.C.M. 1921; amd. Sec. 1, Ch. 84, L. 1947; amd. Sec. 1, Ch. 157, L. 1969; amd. Sec. 5, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-204; amd. Sec. 3, Ch. 494, L. 1983; amd. Sec. 2, Ch. 322, L. 1985; amd. Sec. 1, Ch. 106, L. 1987; amd. Sec. 80, Ch. 83, L. 1989; amd. Sec. 2, Ch. 416, L. 1989; amd. Sec. 4, Ch. 277, L. 1991; amd. Sec. 2, Ch. 321, L. 1991; amd. Sec. 9, Ch. 417, L. 1995; amd. Sec. 3, Ch. 187, L. 1997; amd. Sec. 4, Ch. 29, L. 1999; amd. Sec. 1, Ch. 321, L. 2001; amd. Sec. 3, Ch. 80, L. 2003; amd. Sec. 12, Ch. 180, L. 2007; amd. Sec. 1, Ch. 237, L. 2007; amd. Sec. 2, Ch. 253, L. 2009; amd. Sec. 93, Ch. 258, L. 2011; amd. Sec. 11, Ch. 96, L. 2013; amd. Sec. 1, Ch. 85, L. 2021; amd. Sec. 12, Ch. 507, L. 2023.**

Compiler's Comments

Contingent Termination: Section 3, Ch. 237, L. 2007, amended sec. 3, Ch. 321, L. 2001, as follows: In (1), (2), (3), and (4) inserted "and [section 1 of this act]" and "and [section 2 of this act]"; in (1), (2), and (3) (two places) before "social security number" inserted "last four digits of the"; in (2) and (3) after "social security number" inserted "for a resident applicant"; in (4) substituted "87-2-106(10)" for "87-2-106(9)" and substituted "87-2-106(11)" for "87-2-106(10)"; and made minor changes in style. Amendment effective April 24, 2007.

Section 5, Ch. 237, L. 2007, provided: "[This act] terminates 3 years after [the effective date of this act] [effective April 24, 2007] unless the director of the department of public health and human services certifies to the governor and the secretary of state and provides written notice to the code commissioner that an extension to the use of the last four digits of a social security number for recreational licenses has been granted by the federal government." The federal government granted an extension to the use of the last four digits of a social security number for an additional 3 years ending February 26, 2013. In a letter dated June 3, 2013, the secretary of state notified the code commissioner that the exemption was extended through February 26, 2016. Information from the department of public health and human services indicates that there is a continuous extension and approval in place for use of the last four digits of a social security number.

Contingent Termination: Section 3, Ch. 321, L. 2001, provided: "(1) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted the state of Montana an exemption from the requirement that an applicant under 16 years of age provide a social security number on an application for a recreational license, the bracketed language in 87-2-106(1) and 87-2-202(1) must read: "social security number for an applicant 16 years of age or older".

(2) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted the state of Montana an exemption from the requirement that a Montana resident provide a social security number on an application for a recreational license, the bracketed language in 87-2-106(1) and 87-2-202(1) must read: "social security number for a nonresident applicant, social security number, driver's license number, or Montana identification card number issued by the department of justice for a resident who does not hold a Montana driver's license if the applicant has provided a social security number when applying for the Montana identification card".

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted the state of Montana an exemption from the requirement that any applicant provide a social security number on an application for a recreational license, the bracketed language in 87-2-106(1) and 87-2-202(1) must read: "social security number for a nonresident applicant who does not hold and present a valid driver's license from the applicant's state of residence, social security number, driver's license number, or Montana identification card number issued by the department of justice for a resident who does not hold a Montana driver's license if the applicant has provided a social security number when applying for the Montana identification card".

(4) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government, through repeal or amendment of federal law, no longer requires an applicant to provide a social security number on an application for a recreational license, the bracketed language in 87-2-106(1) and 87-2-202(1) is void, the bracketed language in 87-2-106(9) and 87-2-202(5) is void, and the bracketed language in 87-2-106(10) and 87-2-202(6) must read: "maintained by the department".

(5) The secretary of state shall notify the code commissioner of the occurrence of any of the contingencies described in subsections (1) through (4)."

Occurrence of Multiple Contingencies — Directions to Code Commissioner: Section 4, Ch. 321, L. 2001, provided: "Whenever the secretary of state notifies the code commissioner of the occurrence of more than one of the contingencies described in [section 3] [not codified], the code commissioner is directed to change the bracketed language in 87-2-106(1) and 87-2-202(1) to give effect to each exemption."

Effective Dates: Section 6, Ch. 321, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 21, 2001].

(2) If one or more of the contingencies in [section 3] [not codified] occur, the applicable contingency is effective upon certification of that contingency to the governor and the secretary of state and notification to the Montana code commissioner."

Applicability: Section 7, Ch. 321, L. 2001, provided: "With regard to an application for a new hunting, fishing, or trapping license or wildlife conservation license, [this act] applies to license years beginning on or after the first day of March immediately following [the effective date of the respective applicable contingency]."

Cross-References

Interstate Wildlife Violation Compact, Title 87, ch. 1, part 8.

Resident defined, 87-2-102.

87-2-107. License form. The form of the license must be determined and the license blanks prepared by the department and furnished by it to the officers and persons authorized to issue the license. Licenses must be issued in the name of the department. Each license issued must be signed by the licensee in ink or indelible pencil on the face of the license or signed electronically.

History: En. Sec. 8, Ch. 238, L. 1921; re-en. Sec. 3688, R.C.M. 1921; re-en. Sec. 3688, R.C.M. 1935; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-212; amd. Sec. 4, Ch. 80, L. 2003; amd. Sec. 1, Ch. 44, L. 2015.

87-2-108. Repealed. Sec. 20, Ch. 478, L. 1979.

History: En. Sec. 1, Ch. 165, L. 1967; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-212.1; amd. Sec. 2, Ch. 218, L. 1979.

87-2-109. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 9, Ch. 238, L. 1921; re-en. Sec. 3689, R.C.M. 1921; amd. Sec. 10, Ch. 59, L. 1927; re-en. Sec. 3689, R.C.M. 1935; amd. Sec. 4, Ch. 224, L. 1947; amd. Sec. 24, Ch. 511, L. 1973; amd. Sec. 29, Ch. 9, L. 1977; R.C.M. 1947, 26-213; amd. Sec. 3, Ch. 321, L. 1991; amd. Sec. 10, Ch. 417, L. 1995.

87-2-110. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 12, Ch. 238, L. 1921; re-en. Sec. 3692, R.C.M. 1921; re-en. Sec. 3692, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1955; amd. Sec. 7, Ch. 9, L. 1977; R.C.M. 1947, 26-217; amd. Sec. 12, Ch. 417, L. 1995.

87-2-111. Termination of license. Such licenses shall be void after the last day of February next succeeding their issuance, except that trapping licenses as described in part 6 of this chapter shall be void after June 30 next succeeding their issuance.

History: En. Sec. 10, Ch. 238, L. 1921; re-en. Sec. 3690, R.C.M. 1921; re-en. Sec. 3690, R.C.M. 1935; R.C.M. 1947, 26-214; amd. Sec. 4, Ch. 494, L. 1983; amd. Sec. 2, Ch. 304, L. 1985.

87-2-112. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 1, Ch. 43, L. 1971; amd. Sec. 2, Ch. 480, L. 1973; amd. Sec. 4, Ch. 465, L. 1977; R.C.M. 1947, 26-812; amd. Sec. 2842, Ch. 56, L. 2009.

87-2-113. *(Temporary)* **Application fees.** (1) (a) Except as provided in subsection (1)(b), when the department determines a drawing is necessary prior to issuance of hunting licenses for any game species during a hunting season, it shall collect a $5 per species application fee.

(b) The department shall collect the following per species special license application fees:

(i) moose—resident, $10; nonresident, $50;

(ii) mountain goat—resident, $10; nonresident, $50;

(iii) mountain sheep—resident, $10; nonresident, $50;

(iv) wild buffalo or bison—resident, $10; nonresident, $50.

(2) (a) If a resident participates in the bonus point system adopted by the commission, the department shall collect an additional application fee of $2 per species.

(b) If a nonresident participates in the bonus point system adopted by the commission, the department shall collect an additional application fee of $20 per species.

(3) Application fees collected pursuant to this section must be deposited in the state special revenue fund to the credit of the department as set forth in 87-1-601.

(4) The payment of an application fee confers no hunting rights or privileges.

(5) The commission may waive the provisions of subsection (1) when a drawing is required for a special season under 87-1-304.

87-2-113. *(Effective March 1, 2026)* **Application fees.** (1) (a) Except as provided in subsection (1)(b), when the department determines a drawing is necessary prior to issuance of hunting licenses for any game species during a hunting season, it shall collect a $5 per species application fee.

(b) The department shall collect the following per species special license application fees:

(i) moose—resident, $10; nonresident, $50;

(ii) mountain goat—resident, $10; nonresident, $50;

(iii) mountain sheep—resident, $10; nonresident, $50;

(iv) sandhill crane—resident, $10; nonresident, $50;

(v) swan—resident, $10; nonresident, $50;

(vi) wild buffalo or bison—resident, $10; nonresident, $50.

(2) (a) If a resident participates in the bonus point system adopted by the commission, the department shall collect an additional application fee of $2 per species.

(b) If a nonresident participates in the bonus point system adopted by the commission, the department shall collect an additional application fee of $20 per species.

(3) Application fees collected pursuant to this section must be deposited in the state special revenue fund to the credit of the department as set forth in 87-1-601.

(4) The payment of an application fee confers no hunting rights or privileges.

(5) The commission may waive the provisions of subsection (1) when a drawing is required for a special season under 87-1-304.

History: En. Sec. 14, Ch. 554, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 592, L. 1991; amd. Sec. 2, Ch. 533, L. 1999; amd. Sec. 2, Ch. 585, L. 2005; amd. Sec. 1, Ch. 298, L. 2013; amd. Sec. 5, Ch. 349, L. 2017; amd. Sec. 1, Ch. 85, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 85, L. 2025. Amendment effective March 1, 2026.

87-2-114. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 11, Ch. 417, L. 1995; amd. Sec. 5, Ch. 80, L. 2003.

87-2-115. Nonresident elk and deer license preference point system. (1) The department shall establish a preference point system to distribute Class B-10 nonresident big game combination licenses and Class B-11 nonresident deer combination licenses.

(2) Nonresidents applying to purchase a Class B-10 or Class B-11 license may purchase a preference point, upon payment of a nonrefundable $100 fee, that gives an applicant who has more preference points priority to receive a Class B-10 or Class B-11 license over an applicant who has purchased fewer preference points.

(3) An applicant may:

(a) purchase only one preference point per license year except a nonresident hunting with an outfitter licensed pursuant to Title 37, chapter 47, part 3, and providing the documentation required in subsection (8), may purchase two preference points per license year. No applicant may accumulate more than three preference points total.

(b) purchase a preference point without applying for a Class B-10 or Class B-11 license. An applicant not applying for a Class B-10 or Class B-11 license may purchase a preference point only between July 1 and December 31 of that license year.

(4) (a) The department shall delete an applicant's accumulated preference points if the applicant:

(i) obtains a Class B-10 or Class B-11 license; or

(ii) does not apply for a Class B-10 or Class B-11 license in consecutive years.

(b) If an applicant is unsuccessful in drawing a Class B-10 or Class B-11 license, the department shall allow the applicant to keep and apply preference points to subsequent drawings if done in consecutive years.

(5) Subject to the provisions of 87-2-714, the department shall issue 75% of the Class B-10 and Class B-11 licenses made available for purchase pursuant to 87-2-505 and 87-2-510 by drawings in which the licenses are awarded to applicants in the order of which applicants have purchased the greatest number of preference points. If the number of licenses to be issued under this subsection exceeds the number of applicants who have purchased preference points, the remaining licenses must be added to the licenses issued pursuant to subsection (6).

(6) Subject to the provisions of 87-2-714, the department shall issue 25% of the Class B-10 and Class B-11 licenses made available for purchase pursuant to 87-2-505 and 87-2-510 by drawings in which the licenses are awarded to applicants who have not purchased any preference points. If the number of licenses to be issued under this subsection exceeds the number of applicants who have not purchased preference points, the remaining licenses must be added to the licenses issued pursuant to subsection (5).

(7) Up to five applicants may apply as a party under this section. The department shall use an average of the number of preference points accumulated by those applicants to determine their priority in receiving licenses issued pursuant to subsection (5). The department shall calculate the average rounded to the third decimal place.

(8) A nonresident purchasing a second preference point pursuant to subsection (3)(a) shall provide written affirmation at the time of application indicating the name and license number of the outfitter with whom the person intends to hunt. If the nonresident obtains the license applied for with the preference points purchased pursuant to subsection (3)(a), the nonresident may only use the license when accompanied by an outfitter or the outfitter's designee licensed to provide guiding services.

(9) (a) Fees collected from a nonresident purchasing a second preference point pursuant to subsection (3)(a) must be allocated as follows:

(i) 25% to public access land agreements established pursuant to 87-1-295;

(ii) 25% to hunting access programs established pursuant to 87-1-265;

(iii) 25% to the future fisheries program established in 87-1-272 with a priority given to funding projects that provide public access through private property; and

(iv) 25% to the purchase of permanent easements through private property to access otherwise inaccessible lands. An easement funded by this subsection (9)(a)(iv) may be granted only across private land to public land that is leased by the landowner, public land for which there is no leaseholder, or public land for which the landowner has consent of the leaseholder.

(b) The department may expend up to 10% of the revenue allocated pursuant to subsection (9)(a) to pay administrative costs incurred by the department for the purposes outlined in subsection (9)(a), including but not limited to contracting and transaction costs incurred by the department or entities partnering with the department, and for providing support to the private land/public wildlife advisory committee for its review of public access land agreements pursuant to 87-1-295.

(c) At the end of each fiscal year, funds allocated pursuant to subsection (9)(a) that remain unobligated are available to the department for any purpose pursuant to 87-1-201(3).

History: **En. Sec. 2, Ch. 391, L. 2011; amd. Sec. 4, Ch. 221, L. 2019; amd. Sec. 1, Ch. 280, L. 2019; amd. Sec. 6, Ch. 552, L. 2021; amd. Sec. 2, Ch. 487, L. 2023.**

87-2-116. Base hunting license prerequisite for other hunting licenses — fee. (1) To be eligible to apply for a hunting license or Class A-2 special bow and arrow license, a person must first obtain a base hunting license as provided in this section. The base hunting license must be purchased once each license year.

(2) Resident base hunting licenses may be purchased for a fee of $10, of which $2 is a hunting access fee that must be used by the department to fund programs authorized in 87-1-265.

(3) Nonresident base hunting licenses may be purchased for a fee of $50, of which $40 is a hunting access fee that must be used by the department to fund programs authorized in 87-1-265.

History: **En. Sec. 2, Ch. 449, L. 2015; amd. Sec. 10, Ch. 63, L. 2019; amd. Sec. 1, Ch. 670, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 670, L. 2025. Amendment effective October 1, 2025.

87-2-117. License bonus point system. (1) The commission shall establish a bonus point system that gives an applicant who has purchased more bonus points more chances to receive a license, tag, or permit over an applicant who has purchased fewer bonus points.

(2) A person may purchase only one bonus point per species per license year and may:

(a) purchase a bonus point when applying for a license, tag, or permit by paying the fee established in 87-2-113(2) per species; or

(b) if the person is otherwise eligible to apply for a license, tag, or permit, purchase a bonus point without applying for the license, tag, or permit by paying the fee established in subsection (5). An applicant not applying for a license, tag, or permit may purchase a bonus point only between July 1 and September 30 in the current license year.

(3) The department may only apply any accumulated bonus points to a person's chance to obtain a license, tag, or permit if the person purchases a bonus point when applying for the license, tag, or permit.

(4) Bonus points may only be applied to first choice drawings.

(5) (a) A resident who does not apply for a license, tag, or permit may purchase a bonus point for $15 for each species for which a bonus point is made available by the commission.

(b) A nonresident who does not apply for a license, tag, or permit may purchase a bonus point for $25 for each species for which a bonus point is made available by the commission, except that the fee is $75 for moose, mountain goat, mountain sheep, and wild buffalo or bison.

(6) The department may not delete a person's accumulated bonus points unless the person obtains the license, tag, or permit associated with the bonus points, in which case the department shall delete the person's accumulated bonus points.

(7) (a) Except as provided in subsection (7)(b), the department shall square the number of points purchased by a person per species when conducting drawings for licenses, tags, and permits.

(b) For persons applying for licenses, tags, or permits as a party, the department shall calculate the average number of bonus points accumulated by the individuals listed on the party application, rounded to the nearest whole number, and square the average. Each individual retains their own bonus points unless the party obtains the licenses, tags, or permits associated with the bonus points, in which case the department shall delete each person's accumulated bonus points.

History: **En. Sec. 1, Ch. 349, L. 2017; amd. Sec. 1, Ch. 208, L. 2019; amd. Sec. 1, Ch. 360, L. 2019; amd. Sec. 1, Ch. 95, L. 2021.**

87-2-118 reserved.

87-2-119. Electronic validation of hunting licenses and tags — rulemaking. (1) A hunter may electronically validate any hunting license or tag issued electronically pursuant to this chapter for any species for which a carcass tag is issued.

(2) Electronic validation of licenses pursuant to this section may not include the collection of hunter location data through the use of a global positioning system.

(3) The department may adopt rules to implement this section. Except as provided in 87-3-310, the department may adopt rules regarding the possession of a species for which a license or tag was electronically validated.

History: En. Sec. 1, Ch. 75, L. 2017; amd. Sec. 3, Ch. 238, L. 2019; amd. Sec. 1, Ch. 71, L. 2023.

87-2-120. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 6, Ch. 417, L. 1995; amd. Sec. 1, Ch. 55, L. 2007.

87-2-121. Lawful method of hunting on landowner's private property. In recognition of the inalienable right of persons to acquire and possess property in all lawful ways contained in Article II, section 3, of the Montana constitution and of the heritage of individual citizens to harvest wild game animals contained in Article IX, section 7, of the Montana constitution, a landowner and a landowner's guests and lessees may hunt on the landowner's private property as long as the hunting is conducted in the manner provided by law and is consistent with regulations.

History: En. Sec. 1, Ch. 164, L. 2005.

87-2-122 and 87-2-123 reserved.

87-2-124. Option to direct limited drawing refunds to block management program. A person who participates in a limited drawing but is not successful in the drawing may opt, upon application, to direct that the refund the person is eligible to receive instead be deposited in the hunting access account established in 87-1-290 and used for the purpose of funding the block management program established in 87-1-265.

History: En. Sec. 1, Ch. 106, L. 2019; amd. Sec. 17, Ch. 166, L. 2023.

87-2-125. Eligibility standards for licenses or permits obtained by telephone, mail, or electronic means — rulemaking. The department may adopt rules that prescribe requirements necessary to determine that an applicant meets the eligibility requirements provided in this part when the applicant obtains a license or permit by telephone, by mail, on the internet, or by other electronic means.

History: En. Sec. 6, Ch. 80, L. 2003.

87-2-126. Provisional hunter safety and education certificate for person with developmental disability — conditions of licensure — definition. (1) A person with a diagnosed developmental disability who satisfactorily completes the classroom portion and field course of the firearms safety course but who is unable to pass the written or an alternate-format exam portion of the course because of a developmental disability may be issued a provisional hunter safety and education certificate. The certificate is valid only when used according to this section.

(2) A person with a developmental disability may obtain a hunting license with a provisional hunter safety and education certificate.

(3) Each person who uses a provisional hunter safety and education certificate must be in the company of and assisted by the person's parent or guardian or by an adult designated by the person or by the person's parent or guardian when hunting and shall conduct all hunting within the terms and conditions of the license issued. A person who is accompanying and assisting a person with a disability:

(a) must have successfully completed a hunter safety and education course pursuant to 87-2-105(1);

(b) must have as the sole priority the direct supervision of the person with a disability at all times;

(c) may only be actively engaged in hunting a game animal that may be taken with the license of the person with a disability; and

(d) must be able to immediately intervene and control the firearm of the person with a disability at any time.

(4) (a) This section does not entitle a person to possess a firearm if the person is otherwise prohibited from possessing a firearm under state or federal law or a court order.

(b) A person may not knowingly authorize or permit a person with a developmental disability who is incapable of safely possessing a firearm to possess a firearm for hunting in this state.

(5) As used in this section, "developmental disability" means a developmental disability as defined in 53-20-102.

History: **En. Sec. 1, Ch. 68, L. 2009.**

87-2-127. Trapper education required. (1) (a) Except as provided in subsection (2), a Class C trapper's license may not be issued to a resident unless the license agent processing the application determines proof of:

(i) the applicant's purchase of a trapper's license in three prior trapping seasons; or

(ii) completion of a trapper education course established pursuant to this section or otherwise approved by the trapper education committee.

(b) Neither the department nor a license agent is required to provide records of past Montana trapper's license purchases prior to 1990 or for trapping licenses purchased in another state.

(2) A resident is not required to complete a trapper education course if the resident:

(a) is trapping for the purposes of livestock or property protection; or

(b) completes the advanced level of the youth trapper camp offered by the Montana trappers association.

(3) The department shall provide a trapper education course that includes field instruction and classroom or online instruction and incorporates the trapper education manual from the Montana trappers association in the course resources. The course must:

(a) include but is not limited to instruction in trapping ethics, best practices, equipment, regulations, and avoidance of nontarget species;

(b) meet the requirements of rule or law for certification to trap wolves; and

(c) be reviewed and, as needed, revised by the trapper education committee established in subsection (6).

(4) To successfully complete a trapper education course, a person must pass a final exam. Upon successful completion, the department shall issue that person a certificate of completion.

(5) To be certified to teach a trapper education course established pursuant to this section, an instructor shall:

(a) pass a background check conducted by the department; and

(b) be deemed competent by the trapper education committee established in subsection (6) to give instruction in ethical and humane trapping methods.

(6) The department shall establish a trapper education committee consisting of three active, certified trapper instructors, two of whom are members of the Montana trappers association, and three department staff knowledgeable in trapping. The committee shall review and revise trapper education course content and certify new trapper education instructors.

(7) As part of the department's trapper licensing procedures, the department shall notify the public of the requirements of this section.

History: **En. Sec. 1, Ch. 170, L. 2021.**

87-2-128 and 87-2-129 reserved.

87-2-130. Aquatic invasive species prevention pass. (1) Except as provided in 87-2-803(6), to be eligible to fish in Montana or to apply for a fishing license or a combination license that includes a fishing license, a person who is 16 years of age or older must first obtain an aquatic invasive species prevention pass as provided in this section. The pass must be purchased once each license year.

(2) Resident aquatic invasive species prevention passes may be purchased for a fee of $2.

(3) Nonresident aquatic invasive species prevention passes may be purchased for a fee of $7.50.

History: **En. Sec. 1, Ch. 387, L. 2017; amd. Sec. 8, Ch. 356, L. 2019; amd. Sec. 1, Ch. 318, L. 2023.**

Part 2
Wildlife Conservation License

87-2-201. Conservation license required and prerequisite for other licenses. (1) Except as provided in 87-2-803(6) and 87-2-815, it is unlawful for any person to engage in any of the following without first having purchased a conservation license as provided in this part:

(a) purchase or apply for a hunting, fishing, nonresident wildlife management area shed hunting, or trapping license;

(b) use lands owned or controlled by the department; or

(c) engage in general recreational use as defined in 77-1-101 on state trust land pursuant to an agreement established under 77-1-815.

(2) If the department of natural resources and conservation and the department enter into an agreement pursuant to 77-1-815, the department shall submit every other legislative session a report to the legislature in accordance with 5-11-210 that documents the number of conservation licenses sold and revenue received pursuant to this section. The first report shall be provided to the legislature by January 1, 2027.

History: En. Sec. 1, Ch. 172, L. 1969; R.C.M. 1947, 26-229; amd. Sec. 1, Ch. 41, L. 1989; amd. Sec. 121, Ch. 2, L. 2009; amd. Sec. 5, Ch. 221, L. 2019; amd. Sec. 13, Ch. 507, L. 2023; amd. Sec. 4, Ch. 748, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 748, L. 2025. Amendment effective October 1, 2025.

87-2-202. Application — fee. (1) Except as provided in 87-2-817(2), a conservation license must be sold upon written application. The application must contain the applicant's name, age, [last four digits of the applicant's social security number,] street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, a tribal identification card, or other identification specified by the department to substantiate the required information when applying for a conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a conservation license or to receive a free conservation license pursuant to 87-2-817(2).

(2) Hunting, fishing, nonresident wildlife management area shed hunting, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident conservation licenses may be purchased for a fee of $8, of which 25 cents is a voluntary search and rescue donation.

(b) Nonresident conservation licenses may be purchased for a fee of $10, of which 25 cents is a voluntary search and rescue donation.

(c) A person who purchases a conservation license may make a written election not to pay the additional search and rescue donation in subsections (3)(a) and (3)(b). If a written election is made, the donation may not be collected.

[(4) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(5) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. *(Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001. The $2 conservation license fee increases in subsections (3)(a) and (3)(b) enacted by Ch. 596, L. 2003, are void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)*

History: En. Sec. 2, Ch. 172, L. 1969; amd. Sec. 2, Ch. 289, L. 1975; amd. Sec. 8, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-230; amd. Sec. 2, Ch. 554, L. 1981; amd. Sec. 5, Ch. 494, L. 1983; amd. Sec. 4, Ch. 321, L. 1991; amd. Sec. 2, Ch. 592, L. 1991; amd. Sec. 4, Ch. 187, L. 1997; amd. Sec. 5, Ch. 29, L. 1999; amd. Sec. 4, Ch. 216, L. 2001; amd. Sec. 2, Ch. 321, L. 2001; amd. Sec. 1, Ch. 528, L. 2001; amd. Sec. 8, Ch. 534, L. 2003; amd. Secs. 7, 10, Ch. 596, L. 2003; amd. Sec. 1, Ch. 573, L. 2005; amd. Sec. 3, Ch. 585, L. 2005; amd. Sec. 13, Ch. 180, L. 2007; amd. Sec. 2, Ch. 237, L. 2007; amd. Sec. 1, Ch. 452, L. 2007; amd. Sec. 4, I.M. No. 161, approved Nov. 2, 2010; amd. Sec. 94, Ch. 258, L. 2011; amd. Sec. 8, Ch. 449, L. 2015; amd. Sec. 2, Ch. 85, L. 2021; amd. Sec. 8, Ch. 563, L. 2021; amd. Sec. 14, Ch. 507, L. 2023; amd. Sec. 5, Ch. 748, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 748, L. 2025. Amendment effective October 1, 2025.

Contingent Termination: Section 3, Ch. 237, L. 2007, amended sec. 3, Ch. 321, L. 2001, as follows: In (1), (2), (3), and (4) inserted "and [section 1 of this act]" and "and [section 2 of this act]"; in (1), (2), and (3) (two places) before "social security number" inserted "last four digits of the"; in (2) and (3) after "social security number" inserted "for a resident applicant"; in (4) substituted "87-2-106(10)" for "87-2-106(9)" and substituted "87-2-106(11)" for "87-2-106(10)"; and made minor changes in style. Amendment effective April 24, 2007.

Section 5, Ch. 237, L. 2007, provided: "[This act] terminates 3 years after [the effective date of this act] [effective April 24, 2007] unless the director of the department of public health and human services certifies to the governor and the secretary of state and provides written notice to the code commissioner that an extension to the use of the last four digits of a social security number for recreational licenses has been granted by the federal government." The federal government granted an extension to the use of the last four digits of a social security number for an additional 3 years ending February 26, 2013. In a letter dated June 3, 2013, the secretary of state notified the code commissioner that the exemption was extended through February 26, 2016. Information from the department of public health and human services indicates that there is a continuous extension and approval in place for use of the last four digits of a social security number.

Contingent Voidness: Section 8, Ch. 596, L. 2003, provided: "(1) If the department of natural resources and conservation and the department of fish, wildlife, and parks do not sign an agreement to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust land by [the effective date of this act] [effective March 1, 2004], then [this act] is void. The department of natural resources and conservation shall notify the code commissioner of the failure to reach an agreement. [An agreement was entered into effective December 8, 2003.]

(2) (a) If an agreement between the department of natural resources and conservation and the department of fish, wildlife, and parks to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust land is terminated prior to the expiration date of the agreement, then [this act] is void upon termination. The department of natural resources and conservation shall notify the code commissioner of the termination.

(b) If the department of natural resources and conservation and the department of fish, wildlife, and parks do not enter into a renewal agreement prior to the expiration date of an agreement, then [this act] is void on the expiration date of the agreement. The department of natural resources and conservation shall notify the code commissioner of the expiration.

(3) If a court of competent jurisdiction determines that the agreement to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust lands is invalid, then [this act] is void on the date the court's judgment is final. The department of natural resources and conservation shall notify the code commissioner of the entry of the judgment.

(4) If the department of natural resources and conservation and the department of fish, wildlife, and parks receive written notice from the regional director of the United States fish and wildlife service that [this act] will result in a loss of federal fish and wildlife funds, then [this act] is void. The department of natural resources and conservation shall notify the code commissioner that the department has received a notice and the date upon which the notice was received."

Contingent Termination: Section 3, Ch. 321, L. 2001, provided: "(1) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted the state of Montana an exemption from the requirement that an applicant under 16 years of age provide a social security number on an application for a recreational license, the bracketed language in 87-2-106(1) and 87-2-202(1) must read: "social security number for an applicant 16 years of age or older".

(2) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted the state of Montana an exemption from the requirement that a Montana resident provide a social security number on an application for a recreational license, the bracketed language in 87-2-106(1) and 87-2-202(1) must read: "social security number for a nonresident applicant, social security number, driver's license number, or Montana identification card number issued by the department of justice for a resident who does not hold a Montana driver's license if the applicant has provided a social security number when applying for the Montana identification card".

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted the state of Montana an exemption from the requirement that any applicant provide a social security number on an application for a recreational license, the bracketed language in 87-2-106(1) and 87-2-202(1) must read: "social security number for a nonresident applicant who does not hold and present a valid driver's license from the applicant's state of residence, social security number, driver's license number, or Montana identification card number issued by the department of justice for a resident who does not hold a Montana driver's license if the applicant has provided a social security number when applying for the Montana identification card".

(4) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government, through repeal or amendment of federal law, no longer requires an applicant to provide a social security number on an application for a recreational license, the bracketed language in 87-2-106(1) and 87-2-202(1) is void, the bracketed language in 87-2-106(9) and 87-2-202(5) is void, and the bracketed language in 87-2-106(10) and 87-2-202(6) must read: "maintained by the department".

(5) The secretary of state shall notify the code commissioner of the occurrence of any of the contingencies described in subsections (1) through (4)."

Occurrence of Multiple Contingencies — Directions to Code Commissioner: Section 4, Ch. 321, L. 2001, provided: "Whenever the secretary of state notifies the code commissioner of the occurrence of more than one of the contingencies described in [section 3] [not codified], the code commissioner is directed to change the bracketed language in 87-2-106(1) and 87-2-202(1) to give effect to each exemption."

Effective Dates: Section 6, Ch. 321, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval [approved April 21, 2001].

(2) If one or more of the contingencies in [section 3] [not codified] occur, the applicable contingency is effective upon certification of that contingency to the governor and the secretary of state and notification to the Montana code commissioner."

Applicability: Section 7, Ch. 321, L. 2001, provided: "With regard to an application for a new hunting, fishing, or trapping license or wildlife conservation license, [this act] applies to license years beginning on or after the first day of March immediately following [the effective date of the respective applicable contingency]."

Cross-References

Nonresident conservation license included in Class B-10 and Class B-11 nonresident combination licenses, 87-2-505, 87-2-511.

Resident conservation license included in Class AAA combination sports license, 87-2-711.

87-2-203. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 3, Ch. 172, L. 1969; R.C.M. 1947, 26-231; amd. Sec. 2843, Ch. 56, L. 2009.

87-2-204. Disposition of conservation license fees. The fees from the conservation license must be delivered to the state treasurer and deposited by the treasurer in the state special revenue fund to the credit of the department in accordance with the provisions of 87-1-601.

History: En. Sec. 5, Ch. 172, L. 1969; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-233; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2844, Ch. 56, L. 2009; amd. Sec. 15, Ch. 507, L. 2023.

Cross-References

Disposition of fees, 87-1-201, 87-1-601, 87-1-605, 87-1-701, 87-1-708, 87-1-710.

87-2-205. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 4, Ch. 172, L. 1969; amd. Sec. 31, Ch. 9, L. 1977; R.C.M. 1947, 26-232.

Part 3
Fishing Licenses

Part Cross-References

Use of certain fishing license fees to purchase recreational facilities, 87-1-605.

87-2-301. Class A—resident fishing license. A resident, as defined by 87-2-102, upon payment of a fee of $21, is entitled to receive a Class A license that authorizes the holder of the license to fish with hook and line or rod as prescribed by rules of the department.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(1); amd. Sec. 3, Ch. 554, L. 1981; amd. Sec. 1, Ch. 680, L. 1983; amd. Sec. 1, Ch. 255, L. 1985; amd. Sec. 6, Ch. 601, L. 1989; amd. Sec. 3, Ch. 592, L. 1991; amd. Sec. 4, Ch. 585, L. 2005; amd. Sec. 9, Ch. 449, L. 2015.

Cross-References

River restoration program, 87-1-255 through 87-1-259.

87-2-302. Class B—nonresident fishing license. Any person not a resident, as defined in 87-2-102, upon payment of the sum of $100 to any agent of the department authorized to issue fishing and hunting licenses, is entitled to a Class B license that entitles the holder to fish with hook and line as authorized by the rules and regulations of the department.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(5); amd. Sec. 4, Ch. 554, L. 1981; amd. Sec. 2, Ch. 255, L. 1985; amd. Sec. 7, Ch. 601, L. 1989; amd. Sec. 4, Ch. 592, L. 1991; amd. Sec. 2, Ch. 528, L. 2001; amd. Sec. 10, Ch. 449, L. 2015; amd. Sec. 1, Ch. 353, L. 2021.

Cross-References

River restoration program, 87-1-255 through 87-1-259.

Nonresident child of resident allowed to purchase nonresident licenses at reduced cost, 87-2-514.

87-2-303. Repealed. Sec. 16(2), Ch. 554, L. 1981.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1,

Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(8).

87-2-304. Class B-4—one-day nonresident fishing license. (1) Any person not a resident, as defined in 87-2-102, upon payment of the sum of $14 to any agent of the department authorized to issue fishing and hunting licenses, is entitled to a 1-day nonresident fishing license that authorizes the holder to fish with hook and line, as prescribed by rules and regulations of the department, for 1 calendar day.

(2) When purchasing a license pursuant to this section, the applicant shall indicate, and the license must state, on which calendar date the license will be used. There is no limit on the number of 1-day licenses a person may purchase. If the person is purchasing multiple 1-day licenses at one time, the department may issue a single license listing the multiple calendar dates for which the license is valid. The dates need not be consecutive.

History: En. Sec. 1, Ch. 117, L. 1969; amd. Sec. 2, Ch. 408, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.6; amd. Sec. 5, Ch. 554, L. 1981; amd. Sec. 2, Ch. 680, L. 1983; amd. Sec. 3, Ch. 255, L. 1985; amd. Sec. 5, Ch. 592, L. 1991; amd. Sec. 3, Ch. 528, L. 2001; amd. Sec. 11, Ch. 449, L. 2015; amd. Sec. 6, Ch. 221, L. 2019; amd. Sec. 2, Ch. 353, L. 2021.

87-2-305. Navigable waters subject to fishing rights. Navigable rivers, sloughs, or streams between the lines of ordinary high water thereof of the state of Montana and all rivers, sloughs, and streams flowing through any public lands of the state shall hereafter be public waters for the purpose of angling, and any rights of title to such streams or the land between the high water flow lines or within the meander lines of navigable streams shall be subject to the right of any person owning an angler's license of this state who desires to angle therein or along their banks to go upon the same for such purpose.

History: En. Sec. 3, Ch. 95, L. 1933; re-en. Sec. 3717.3, R.C.M. 1935; R.C.M. 1947, 26-338.

Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.
Owner of land bounded by water, 70-16-201.
Title by prescription, 70-19-405.
Public ways, 85-1-111.
Navigable waters, 85-1-112.
Adjudication of water rights, Title 85, ch. 2, part 2.

87-2-306. Paddlefish tags. The department may issue paddlefish tags to holders of valid Class A, Class A-8, Class B, Class B-4, and Class B-5 fishing licenses for a fee of $6.50 for residents and $15 for nonresidents. Each tag authorizes the holder to fish with hook and line for paddlefish as prescribed by rules of the department.

History: En. Sec. 6, Ch. 554, L. 1981; amd. Sec. 4, Ch. 255, L. 1985; amd. Sec. 6, Ch. 592, L. 1991; amd. Sec. 2, Ch. 3, L. 2001; amd. Sec. 2, Ch. 84, L. 2003; amd. Sec. 4, Ch. 228, L. 2003; amd. Sec. 5, Ch. 585, L. 2005; amd. Sec. 12, Ch. 449, L. 2015.

87-2-307. Class B-5—five-day nonresident fishing license. (1) Any person not a resident, as defined in 87-2-102, upon payment of the sum of $56 to any agent of the department authorized to issue fishing and hunting licenses, is entitled to a 5-day nonresident fishing license that authorizes the holder to fish with hook and line, as prescribed by rules and regulations of the department, for 5 consecutive days.

(2) When purchasing a license pursuant to this section, the applicant shall indicate, and the license must state, on which calendar dates the license will be used. There is no limit on the number of 5-day licenses a person may purchase. If the person is purchasing multiple 5-day licenses at one time, the department may issue a single license listing the calendar dates for which the license is valid. The 5-day periods need not be consecutive.

History: En. Sec. 1, Ch. 228, L. 2003; amd. Sec. 13, Ch. 449, L. 2015; amd. Sec. 7, Ch. 221, L. 2019; amd. Sec. 3, Ch. 353, L. 2021.

87-2-308. Class A-8—resident temporary fishing license. (1) Any resident, as defined in 87-2-102, is entitled to a resident temporary fishing license authorizing the holder to fish with hook and line in designated waters, for a period of time determined by the commission and indicated on the license, upon payment to any agent of the department authorized to issue fishing licenses of the amount determined by the commission. Cost of the license and length of time for which the license is effective must be set:

(a) at an amount that is less than the Class A resident fishing license; and

(b) at an amount and for a length of time that the commission determines will serve at a reasonable price the needs of residents who fish occasionally.

(2) Terms and conditions of the license must be prescribed by rules of the commission.

History: En. Sec. 1, Ch. 336, L. 1997; amd. Sec. 8, Ch. 221, L. 2019.

Cross-References

Fees used to purchase recreational facilities, 87-1-605.

87-2-309 and 87-2-310 reserved.

87-2-311. Free fishing weekends. Each year on Father's Day and Mother's Day weekends, a person may fish for any fish within this state without obtaining a fishing license pursuant to this part as long as the person does so in accordance with any other law or regulation of the department in effect on that weekend.

History: En. Sec. 2, Ch. 316, L. 2011; amd. Sec. 1, Ch. 16, L. 2021.

Part 4
Game Bird Licenses

Part Cross-References

Seasonal rules adopted annually, 2-4-102.
Powers and duties of Department of Fish, Wildlife, and Parks, 87-1-201.
Posting and publication of orders, rules, and regulations, 87-1-202.

87-2-401. *(Temporary)* **Class A-1—resident upland game bird license.** Except as otherwise provided, a resident, as defined by 87-2-102, who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of a fee of $7.50, receive a Class A-1 license that entitles a holder who is 12 years of age or older to hunt upland game birds and possess the carcasses of upland game birds as authorized by department rules.

87-2-401. *(Effective March 1, 2026)* **Class A-1—resident upland game bird license.** Except as otherwise provided, a resident, as defined by 87-2-102, who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of a fee of $10, receive a Class A-1 license that entitles a holder who is 12 years of age or older to hunt upland game birds and possess the carcasses of upland game birds as authorized by department rules.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(part(2)); amd. Sec. 3, Ch. 478, L. 1979; amd. Sec. 1, Ch. 105, L. 1987; amd. Sec. 5, Ch. 636, L. 1987; amd. Sec. 1, Ch. 32, L. 1995; amd. Sec. 13, Ch. 417, L. 1995; amd. Sec. 3, Ch. 533, L. 1999; amd. Sec. 6, Ch. 585, L. 2005; amd. Sec. 2, Ch. 676, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 676, L. 2025. Amendment effective March 1, 2026.

Cross-References

Funding of upland game bird enhancement program, 87-1-246.

87-2-402. *(Temporary)* **Class B-1—nonresident upland game bird license.** Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of a fee of $110 may receive a Class B-1 license that entitles a holder who is 12 years of age or older to hunt upland game birds and possess the carcasses of upland game birds as authorized by department rules.

87-2-402. *(Effective March 1, 2026)* **Class B-1—nonresident upland game bird license.** Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of a fee of $127 may receive a Class B-1 license that entitles a holder who is 12 years of age or older to hunt upland game birds and possess the carcasses of upland game birds as authorized by department rules.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(part(6)); amd. Sec. 4, Ch. 478, L. 1979; amd. Sec. 2, Ch. 105, L. 1987; amd. Sec. 6, Ch. 636, L. 1987; amd. Sec. 7, Ch. 592, L. 1991; amd. Sec. 2, Ch. 32, L. 1995; amd. Sec. 14, Ch. 417, L. 1995; amd. Sec. 1, Ch. 525, L. 1999; amd. Sec. 4, Ch. 533, L. 1999; amd. Sec. 3, Ch. 544, L. 1999; amd. Sec. 3, Ch. 676, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 676, L. 2025. Amendment effective March 1, 2026.

Cross-References

Funding of upland game bird enhancement program, 87-1-246.

Nonresident child of resident allowed to purchase nonresident licenses at reduced cost, 87-2-514.

87-2-403. Wild turkey tags and fee. (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or nonresident conservation license. Each tag entitles the holder to hunt one wild turkey and possess the carcass of the turkey, during times and places that the commission authorizes an open season on wild turkey.

(2) The fee for a wild turkey tag is $6.50 for a resident and $115 for a nonresident, except that a nonresident holder of a valid Class B-1, Class B-10, or Class B-11 license may purchase a wild turkey tag for one-half of the nonresident fee. Turkey tags must be issued either by a drawing system or in unlimited number as authorized by department rules.

History: En. Sec. 1, Ch. 35, L. 1959; amd. Sec. 3, Ch. 148, L. 1963; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-510; amd. Sec. 5, Ch. 478, L. 1979; amd. Sec. 7, Ch. 554, L. 1981; amd. Sec. 3, Ch. 304, L. 1985; amd. Sec. 3, Ch. 598, L. 1987; amd. Sec. 8, Ch. 592, L. 1991; amd. Sec. 15, Ch. 417, L. 1995; amd. Sec. 4, Ch. 528, L. 2001; amd. Sec. 1, Ch. 150, L. 2005; amd. Sec. 7, Ch. 585, L. 2005; amd. Sec. 14, Ch. 449, L. 2015; amd. Sec. 16, Ch. 507, L. 2023.

Cross-References

Portion of fee to fund wildlife habitat, 87-1-242.

Fixing of seasons and bag and possession limits, 87-1-304.

87-2-404. Three-day nonresident captive-reared bird hunting stamp. Except as otherwise provided, a person who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued and who is not a resident, as defined in 87-2-102, may, upon payment of a fee of $20, receive a 3-day nonresident shooting preserve bird hunting stamp that authorizes a holder who is 12 years of age or older to hunt game specified under 87-4-522 on a shooting preserve licensed under 87-4-501 for 3 consecutive calendar days as indicated on the license.

History: En. Sec. 4, Ch. 371, L. 1991; amd. Sec. 16, Ch. 417, L. 1995; amd. Sec. 5, Ch. 533, L. 1999; amd. Sec. 15, Ch. 449, L. 2015.

87-2-405. *(Temporary)* **Class B-2—3-day nonresident upland game bird license.** (1) Except as otherwise provided and subject to subsection (2), a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of a fee of $50, receive a Class B-2 license that entitles a holder who is 12 years of age or older to hunt upland game birds for 3 calendar days as indicated on the license and possess the carcasses of upland game birds as authorized by the commission.

(2) A Class B-2 license may not be used to hunt or take:

(a) ring-necked pheasants during the opening week of that season; or

(b) sage grouse at any time.

87-2-405. *(Effective March 1, 2026)* **Class B-2—3-day nonresident upland game bird license.** (1) Except as otherwise provided and subject to subsection (2), a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of a fee of $60, receive a Class B-2 license that entitles a holder who is 12 years of age or older to hunt upland game birds for 3 calendar days as indicated on the license and possess the carcasses of upland game birds as authorized by the commission.

(2) A Class B-2 license may not be used to hunt or take:
(a) ring-necked pheasants during the opening week of that season; or
(b) sage grouse at any time.

History: En. Sec. 1, Ch. 204, L. 2013; amd. Sec. 4, Ch. 676, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 676, L. 2025. Amendment effective March 1, 2026.

87-2-406 through 87-2-410 reserved.

87-2-411. *(Temporary)* **Migratory game bird licenses — fees — disposition of proceeds.** (1) The fee for a resident to purchase the migratory game bird license is $5.50. The fee for a nonresident to purchase the migratory game bird license is $150.

(2) Money received from the sale of migratory game bird licenses must be deposited in an account in the state special revenue fund for the use of the department and may be expended only for the protection, conservation, and development of wetlands in Montana.

87-2-411. *(Effective March 1, 2026)* **Migratory game bird, sandhill crane, and swan licenses — fees — disposition of proceeds.** (1) The fee for a resident to purchase a migratory game bird license is $10. The fee for a nonresident to purchase a migratory game bird license is $150.

(2) The fee for a resident to purchase a sandhill crane license is $10. The fee for a nonresident to purchase a sandhill crane license is $75. A person who purchases a sandhill crane license shall also purchase a migratory game bird license.

(3) The fee for a resident to purchase a swan license is $10. The fee for a nonresident to purchase a swan license is $75. A person who purchases a swan license shall also purchase a migratory game bird license.

(4) Money received from the sale of migratory game bird, sandhill crane, and swan licenses must be deposited in an account in the state special revenue fund for the use of the department and may be expended only for the protection, conservation, and development of wetlands in Montana.

History: En. Sec. 1, Ch. 609, L. 1985; amd. Sec. 1, Ch. 431, L. 1989; amd. Sec. 3, Ch. 32, L. 1995; amd. Sec. 17, Ch. 417, L. 1995; amd. Sec. 5, Ch. 187, L. 1997; amd. Sec. 1, Ch. 568, L. 1999; amd. Sec. 1, Ch. 129, L. 2001; amd. Sec. 3, Ch. 381, L. 2003; amd. Sec. 8, Ch. 585, L. 2005; amd. Sec. 95, Ch. 258, L. 2011; amd. Sec. 1, Ch. 626, L. 2023; amd. Sec. 2, Ch. 85, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 85, L. 2025. Amendment effective March 1, 2026.

87-2-412. Repealed. Sec. 4, Ch. 381, L. 2003.

History: En. Sec. 2, Ch. 609, L. 1985; amd. Sec. 4, Ch. 32, L. 1995; amd. Sec. 6, Ch. 187, L. 1997.

Part 5
Game Animal Licenses

Part Cross-References

Seasonal rules adopted annually, 2-4-102.
Powers and duties of Department of Fish, Wildlife, and Parks, 87-1-201.
Posting and publication of orders, rules, and regulations, 87-1-202.

87-2-501. Class A-3, A-4, A-5, A-6, and A-9 resident deer, elk, and bear licenses — fees. (1) Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of the proper fee or fees, is entitled to purchase one of each of the following licenses at the prescribed cost that will entitle a holder who is 12 years of age or older to hunt the game animal or animals authorized by the license held and to possess the carcasses of those game animals as authorized by department rules:

(a) Class A-3, deer A tag, $16;
(b) Class A-4, deer B tag, $10;
(c) Class A-5, elk tag, $20;
(d) Class A-6, black bear tag, $19;
(e) Class A-9, resident antlerless elk B tag, $20.

(2) Subject to the management provisions provided in 87-1-321 through 87-1-325, a person may not take more than three elk during any license year, only one of which may be antlered.

History: **En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(4); amd. Sec. 6, Ch. 478, L. 1979; amd. Sec. 8, Ch. 554, L. 1981; amd. Sec. 3, Ch. 680, L. 1983; amd. Sec. 1, Ch. 331, L. 1985; amd. Sec. 2, Ch. 623, L. 1987; amd. Sec. 1, Ch. 296, L. 1989; amd. Sec. 1, Ch. 418, L. 1991; amd. Sec. 9, Ch. 592, L. 1991; amd. Sec. 1, Ch. 263, L. 1995; amd. Sec. 18, Ch. 417, L. 1995; amd. Sec. 6, Ch. 533, L. 1999; amd. Sec. 2, Ch. 201, L. 2003; amd. Sec. 9, Ch. 553, L. 2003; amd. Sec. 9, Ch. 585, L. 2005; amd. Sec. 2, Ch. 381, L. 2019; amd. Sec. 3, Ch. 486, L. 2021.**

Cross-References

Nonresident child of resident allowed to purchase nonresident licenses at reduced cost, 87-2-514.

87-2-502. Repealed. Sec. 20, Ch. 478, L. 1979.

History: **En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(9).**

87-2-503. Repealed. Sec. 20, Ch. 478, L. 1979.

History: **En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(10).**

87-2-504. Class B-7 and B-8—nonresident deer licenses. (1) (a) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish, wildlife, and parks office, Helena, Montana, to purchase one each of the following licenses:

(i) Class B-7, deer A tag, $250;

(ii) Class B-8, deer B tag, $75.

(b) The license entitles a holder who is 12 years of age or older to hunt the game animal or animals authorized by the license and to possess the carcasses of those animals as authorized by commission rules.

(2) Unless purchased as part of a Class B-10 or Class B-11 license, a Class B-7 license may be assigned for use in a specific administrative region or regions or a portion of a specific administrative region or regions or in a specific hunting district or districts or a portion of a specific hunting district or districts. If purchased as part of a Class B-10 or Class B-11 license, the Class B-7 license is valid throughout the state, except as provided in 87-2-512(1)(d). Not more than 5,000 Class B-7 licenses may be sold in any license year.

(3) Subject to the provisions of 87-2-104, the commission may prescribe the use of and set quotas for the sale of Class B-8 licenses by hunting districts, portions of a hunting district, groups of districts, or administrative regions.

History: **En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(11); amd. Sec. 7, Ch. 478, L. 1979; amd. Sec. 3, Ch. 458, L. 1987; amd. Sec. 4, Ch. 598, L. 1987; amd. Sec. 19, Ch. 417, L. 1995; amd. Sec. 2, Ch. 355, L. 1997; amd. Sec. 7, Ch. 533, L. 1999; amd. Sec. 5, Ch. 528, L. 2001; amd. Sec. 9, Ch. 221, L. 2019; amd. Sec. 2, Ch. 404, L. 2023.**

Cross-References

Portion of fee to fund wildlife habitat, 87-1-242.

Prerequisite — wildlife conservation license, 87-2-201.

Nonresident child of resident allowed to purchase nonresident licenses at reduced cost, 87-2-514.

87-2-505. *(Temporary)* **Class B-10—nonresident big game combination license.** (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of the fee of $981 and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a B-10 nonresident big game combination license that entitles a holder who is 12 years of age or older to all the privileges of Class B, Class B-1, and Class B-7 licenses and an elk tag.

(2) Not more than 17,000 Class B-10 licenses may be sold in any 1 license year.

(3) Of the fee paid for the purchase of a Class B-10 nonresident big game combination license pursuant to subsection (1), 28.5% must be deposited in the account established in 87-1-290.

(4) The cost of the Class B-10 nonresident big game combination license must be adjusted annually based on any change to the consumer price index from the previous year. The consumer price index to be used for calculations is the consumer price index for all urban consumers (CPI-U). The adjusted cost must be rounded down to the nearest even-numbered amount.

87-2-505. *(Effective March 1, 2026)* **Class B-10—nonresident big game combination license.** (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of the fee of $1,312 and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a B-10 nonresident big game combination license that entitles a holder who is 12 years of age or older to all the privileges of Class B, Class B-1, and Class B-7 licenses and an elk tag.

(2) Not more than 17,000 Class B-10 licenses may be sold in any 1 license year.

(3) Of the fee paid for the purchase of a Class B-10 nonresident big game combination license pursuant to subsection (1), 28.5% must be deposited in the account established in 87-1-290.

(4) The cost of the Class B-10 nonresident big game combination license must be adjusted annually based on any change to the consumer price index from the previous year. The consumer price index to be used for calculations is the consumer price index for all urban consumers (CPI-U). The adjusted cost must be rounded down to the nearest even-numbered amount.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(12); amd. Sec. 8, Ch. 478, L. 1979; amd. Sec. 9, Ch. 554, L. 1981; amd. Sec. 4, Ch. 680, L. 1983; amd. Sec. 5, Ch. 255, L. 1985; amd. Sec. 5, Ch. 598, L. 1987; amd. Sec. 7, Ch. 636, L. 1987; amd. Sec. 10, Ch. 592, L. 1991; amd. Sec. 8, Ch. 459, L. 1995; amd. Sec. 8, Ch. 533, L. 1999; amd. Sec. 5, Ch. 216, L. 2001; amd. Sec. 6, Ch. 528, L. 2001; amd. Sec. 3, Ch. 201, L. 2003; amd. Sec. 10, Ch. 585, L. 2005; amd. Sec. 2, Ch. 25, L. 2007; amd. Sec. 5, I.M. No. 161, approved Nov. 2, 2010; amd. Sec. 16, Ch. 449, L. 2015; amd. Sec. 10, Ch. 221, L. 2019; amd. Sec. 5, Ch. 676, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 676, L. 2025. Amendment effective March 1, 2026.

Cross-References

Portion of fee to fund wildlife habitat, 87-1-242.

Funding of upland game bird enhancement program, 87-1-246.

Restriction on number, 87-1-304, 87-2-104.

87-2-506. Restrictions on hunting licenses. (1) The department may prescribe by rule the number of hunting licenses to be issued. Any license sold may be restricted to a specific administrative region, hunting district, or other designated area and may specify the species, age, and sex to be taken and the time period for which the license is valid.

(2) When the number of valid resident applications for big game licenses or permits of a single class or type exceeds the number of licenses or permits the department desires to issue in an administrative region, hunting district, or other designated area, then the number of big game licenses or permits issued to nonresident license or permitholders in the region, district, or area may not exceed 10% of the total issued.

(3) Disabled veterans who meet the qualifying criteria provided in 87-2-817(1) must be provided a total of 50 Class A-3 deer A tags, 50 Class A-4 deer B tags, 50 Class B-7 deer A tags, 50 Class B-8 deer B tags, and 50 special antelope licenses annually, which may be used within the administrative region, hunting district, or other designated area of the disabled veteran's choice, except in a region, district, or area where the number of licenses are less than the number of applicants, in which case qualifying disabled veterans are eligible for no more than 10% of the total licenses for that region, district, or area.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(16)(f); amd. Sec. 9, Ch. 478, L. 1979; amd. Sec. 4, Ch. 304, L. 1985; amd. Sec. 1, Ch. 556, L. 2005; amd. Sec. 17, Ch. 449, L. 2015.

Cross-References

Fixing of seasons and bag and possession limits, 87-1-304.
Number of licenses allowed, 87-2-104.

87-2-507. Class D-1—nonresident mountain lion license. Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of a fee of $320, receive a Class D-1 license that entitles a holder who is 12 years of age or older to hunt mountain lion and possess the carcass of the mountain lion as authorized by department rules.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(19); amd. Sec. 10, Ch. 478, L. 1979; amd. Sec. 5, Ch. 680, L. 1983; amd. Sec. 6, Ch. 598, L. 1987; amd. Sec. 20, Ch. 417, L. 1995; amd. Sec. 9, Ch. 533, L. 1999; amd. Sec. 1, Ch. 129, L. 2013.

Cross-References

Portion of fee to fund wildlife habitat, 87-1-242.

87-2-508. Class D-2—resident mountain lion license. Except as otherwise provided in this chapter, a person who is a resident, as defined in 87-2-102, and who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of a fee of $19, receive a Class D-2 license that entitles a holder who is 12 years of age or older to hunt mountain lion and possess the carcass of the mountain lion as authorized by department rules.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(20); amd. Sec. 11, Ch. 478, L. 1979; amd. Sec. 6, Ch. 680, L. 1983; amd. Sec. 11, Ch. 592, L. 1991; amd. Sec. 21, Ch. 417, L. 1995; amd. Sec. 10, Ch. 533, L. 1999; amd. Sec. 11, Ch. 585, L. 2005; amd. Sec. 2, Ch. 129, L. 2013.

87-2-509. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 2, Ch. 267, L. 1955; amd. Sec. 1, Ch. 65, L. 1963; amd. Sec. 1, Ch. 72, L. 1969; amd. Sec. 1, Ch. 48, L. 1971; amd. Sec. 3, Ch. 167, L. 1973; amd. Sec. 1, Ch. 195, L. 1973; amd. Sec. 28, Ch. 9, L. 1977; R.C.M. 1947, 26-202.2(3); amd. Sec. 3, Ch. 589, L. 1993; amd. Sec. 22, Ch. 417, L. 1995.

87-2-510. *(Temporary)* **Class B-11—nonresident deer combination license.** (1) (a) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of a fee of $577 and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a Class B-11 nonresident deer combination license that entitles a holder who is 12 years of age or older to all the privileges of the Class B, Class B-1, and Class B-7 licenses.

(b) Of the fee paid for the purchase of a Class B-11 nonresident deer combination license pursuant to subsection (1)(a), 28.5% must be deposited in the account established in 87-1-290.

(c) The cost of the Class B-11 nonresident deer combination license must be adjusted annually based on any change to the consumer price index from the previous year. The consumer price index to be used for calculations is the consumer price index for all urban consumers (CPI-U). The adjusted cost must be rounded down to the nearest even-numbered amount.

(2) Not more than 4,600 unreserved Class B-11 licenses may be sold in any 1 license year.

87-2-510. *(Effective March 1, 2026)* **Class B-11—nonresident deer combination license.** (1) (a) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of a fee of $760 and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a Class B-11 nonresident deer combination license that entitles a holder who is 12 years of age or older to all the privileges of the Class B, Class B-1, and Class B-7 licenses.

(b) Of the fee paid for the purchase of a Class B-11 nonresident deer combination license pursuant to subsection (1)(a), 28.5% must be deposited in the account established in 87-1-290.

(c) The cost of the Class B-11 nonresident deer combination license must be adjusted annually based on any change to the consumer price index from the previous year. The consumer price index to be used for calculations is the consumer price index for all urban consumers (CPI-U). The adjusted cost must be rounded down to the nearest even-numbered amount.

(2) Not more than 4,600 unreserved Class B-11 licenses may be sold in any 1 license year.

History: En. Sec. 1, Ch. 458, L. 1987; amd. Sec. 11, Ch. 598, L. 1987; amd. Sec. 12, Ch. 592, L. 1991; amd. Sec. 9, Ch. 459, L. 1995; amd. Sec. 11, Ch. 533, L. 1999; amd. Sec. 6, Ch. 216, L. 2001; amd. Sec. 7, Ch. 528, L. 2001; amd. Sec. 12, Ch. 585, L. 2005; amd. Sec. 6, I.M. No. 161, approved Nov. 2, 2010; amd. Sec. 18, Ch. 449, L. 2015; amd. Sec. 11, Ch. 221, L. 2019; amd. Sec. 6, Ch. 676, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 676, L. 2025. Amendment effective March 1, 2026.

87-2-511. *(Temporary)* **Sale and use of Class B-10 and Class B-11 licenses.** (1) The department shall offer the Class B-10 and Class B-11 licenses for sale on April 1, with 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a resident-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant intends to hunt with a resident sponsor and must indicate the name of the resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a resident sponsor and that affirms that the resident sponsor will:

(a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with the resident sponsor, where they hunted, and what game was taken; and

(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor. If there is a sufficient number of licenses set forth in subsection (1), the department shall issue a license to one applicant sponsored by each resident landowner

who owns 640 or more contiguous acres. If enough licenses remain for a second applicant for each resident landowner sponsor, the department shall issue a license to the second applicant sponsored by each resident landowner. The department shall conduct a drawing for any remaining resident-sponsored licenses. If there is not a sufficient number of licenses set forth in subsection (1) to allow each resident landowner who owns 640 contiguous acres to sponsor one applicant, the department shall conduct a drawing for the resident-sponsored licenses. However, a resident sponsor of a Class B-11 license may submit no more than 15 certificates of sponsorship in any license year.

(4) A nonresident who hunts under the authority of a resident landowner-sponsored license shall conduct all deer hunting on the deeded lands of the sponsoring landowner.

(5) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) must be issued by a drawing among all applicants for the respective unreserved licenses.

(6) (a) An applicant who applies for a Class B-10 license and an applicable special elk permit but who is not successful in a drawing for the special elk permit may choose to retain only the Class B-7 portion of the Class B-10 license. The department shall sell the Class B-7 portion as a Class B-11 license for the fee set in 87-2-510. The provisions of this subsection (6)(a) do not affect the limits established in 87-2-510(2). The remaining elk tag portion of the Class B-10 license must be sold by the department as an elk-only combination license for a fee of $831.

(b) Subject to the statutory quota provided in 87-2-505, if the department determines all available elk-only combination licenses have sold by December 1 in any license year, the cost of the elk-only combination license must be adjusted for the subsequent license year based on any change to the consumer price index from the previous year. The consumer price index to be used for calculations is the consumer price index for all urban consumers (CPI-U). The adjusted cost must be rounded down to the nearest even-numbered amount and applies to subsequent license years unless the conditions of this subsection are met.

(c) The department may retain 10% of the Class B-10 license fee if an applicant chooses to buy only a portion of the Class B-10 license pursuant to subsection (6)(a) after the Class B-10 license has been issued to the applicant.

(d) The revenue collected pursuant to this subsection (6) must be deposited in the state special revenue account to the credit of the department and may not be allocated pursuant to other statutory requirements generally applicable to Class B-10 or Class B-11 licenses.

87-2-511. *(Effective March 1, 2026)* **Sale and use of Class B-10 and Class B-11 licenses.** (1) The department shall offer the Class B-10 and Class B-11 licenses for sale on April 1, with 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a resident-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant intends to hunt with a resident sponsor and must indicate the name of the resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a resident sponsor and that affirms that the resident sponsor will:

(a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with the resident sponsor, where they hunted, and what game was taken; and

(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor. If there is a sufficient number of licenses set forth in subsection (1), the department shall issue a license to one applicant sponsored by each resident landowner who owns 640 or more contiguous acres. If enough licenses remain for a second applicant for each resident landowner sponsor, the department shall issue a license to the second applicant sponsored by each resident landowner. The department shall conduct a drawing for any remaining resident-sponsored licenses. If there is not a sufficient number of licenses set forth

in subsection (1) to allow each resident landowner who owns 640 contiguous acres to sponsor one applicant, the department shall conduct a drawing for the resident-sponsored licenses. However, a resident sponsor of a Class B-11 license may submit no more than 15 certificates of sponsorship in any license year.

(4) A nonresident who hunts under the authority of a resident landowner-sponsored license shall conduct all deer hunting on the deeded lands of the sponsoring landowner.

(5) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) must be issued by a drawing among all applicants for the respective unreserved licenses.

(6) (a) An applicant who applies for a Class B-10 license and an applicable special elk permit but who is not successful in a drawing for the special elk permit may choose to retain only the Class B-7 portion of the Class B-10 license. The department shall sell the Class B-7 portion as a Class B-11 license for the fee set in 87-2-510. The provisions of this subsection (6)(a) do not affect the limits established in 87-2-510(2). The remaining elk tag portion of the Class B-10 license must be sold by the department as an elk-only combination license for a fee of $1,112.

(b) Subject to the statutory quota provided in 87-2-505, if the department determines all available elk-only combination licenses have sold by December 1 in any license year, the cost of the elk-only combination license must be adjusted for the subsequent license year based on any change to the consumer price index from the previous year. The consumer price index to be used for calculations is the consumer price index for all urban consumers (CPI-U). The adjusted cost must be rounded down to the nearest even-numbered amount and applies to subsequent license years unless the conditions of this subsection are met.

(c) The department may retain 10% of the Class B-10 license fee if an applicant chooses to buy only a portion of the Class B-10 license pursuant to subsection (6)(a) after the Class B-10 license has been issued to the applicant.

(d) The revenue collected pursuant to this subsection (6) must be deposited in the state special revenue account to the credit of the department and may not be allocated pursuant to other statutory requirements generally applicable to Class B-10 or Class B-11 licenses.

History: En. Sec. 2, Ch. 458, L. 1987; amd. Sec. 19, Ch. 328, L. 1995; amd. Secs. 10, 15, Ch. 459, L. 1995; amd. Sec. 4, Ch. 544, L. 1999; amd. Sec. 3, Ch. 470, L. 2005; amd. Sec. 7, I.M. No. 161, approved Nov. 2, 2010; amd. Sec. 1, Ch. 336, L. 2011; amd. Sec. 1, Ch. 104, L. 2013; amd. Sec. 1, Ch. 319, L. 2013; amd. Sec. 19, Ch. 449, L. 2015; amd. Sec. 1, Ch. 287, L. 2017; amd. Sec. 1, Ch. 114, L. 2019; amd. Sec. 7, Ch. 676, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 7, Ch. 676, L. 2025. Amendment effective March 1, 2026.

87-2-512. Separation of Class B-7 license from Class B-10 license for deer management purposes — disposition of license revenue. (1) The commission may by rule separate the Class B-7 license from the Class B-10 license and sell the separated Class B-7 license, giving a preference to any Class B-10 license holder to purchase one of the separated Class B-7 licenses. In the case of separated Class B-7 licenses that are not purchased by Class B-10 license holders, the commission, for purposes of sound deer management:

(a) may authorize the sale of not more than 5,000 Class B-7 licenses that have been separated from the Class B-10 licenses, as limited by 87-2-504;

(b) may authorize all or a portion of the separated Class B-7 licenses to be sold as Class B-11 combination licenses;

(c) shall set the fees for the separated licenses as follows:

(i) the fee for a Class B-10 license without the deer tag may not be more than the fee set in 87-2-505 for licenses in the general category; and

(ii) the fee for the separated Class B-11 licenses may not be more than the fees specified in 87-2-510 for licenses in the general and landowner-sponsored categories;

(d) may assign the separated Class B-7 or Class B-11 licenses for use in specific administrative regions, portions of administrative regions, hunting districts, or portions of hunting districts;

(e) may allocate a portion of the separated Class B-7 or Class B-11 licenses among the general and landowner-sponsored categories established in 87-2-510 and 87-2-511 but not count those licenses as part of the statutory quotas, with the Class B-7 licenses then subject to the requirements and procedures of 87-2-511; and

(f) may condition the separated Class B-7 and Class B-11 licenses as appropriate and necessary to manage the harvest of deer, including restricting the use of a license to either mule deer or whitetail deer.

(2) The revenue from any Class B-11 licenses that have been separated from Class B-10 licenses must be deposited in the state special revenue account to the credit of the department and not allocated pursuant to other statutory requirements generally applicable to Class B-11 licenses. The revenue from Class B-10 licenses sold without a deer tag must be allocated in the same manner as revenue from Class B-10 licenses sold with a deer tag.

History: En. Sec. 3, Ch. 355, L. 1997; amd. Sec. 8, I.M. No. 161, approved Nov. 2, 2010.

Cross-References

Fixing of seasons and bag and possession limits, 87-1-304.

87-2-513. *(Temporary)* **Either-sex or antlerless elk license or permit for landowner who offers free public elk hunting — terms, conditions, and issuance.** (1) (a) The department may issue, at no cost to a landowner who provides free public elk hunting on the landowner's property and pursuant to this section, an either-sex or antlerless elk license, permit, or combination of the two as required in that hunting district for the landowner or the landowner's designee to hunt on the landowner's property or on private property leased by the landowner for agricultural purposes.

(b) A designee may be an immediate family member or an authorized full-time employee of the landowner who is eligible for licensure under Title 87, chapter 2.

(2) To be eligible for a license or permit pursuant to this section, a landowner:

(a) must own at least 640 acres of occupied elk habitat, except that smaller acreages are eligible if the department determines that site conditions exist to accommodate successful public hunting;

(b) must have entered into a contractual public elk hunting access agreement with the department in accordance with subsection (7) that allows public access for free public elk hunting on the landowner's property throughout the regular hunting season; and

(c) may not charge a fee or authorize a person to charge a fee for hunting access on the landowner's property.

(3) (a) For every three members of the public allowed to hunt under the contractual public elk hunting access agreement, the department may issue one license, permit, or combination of the two pursuant to subsection (1). The department may limit the total number of licenses and permits issued under this section.

(b) At least one of the public hunters must hold the equivalent license, permit, or combination of the two that is issued to the landowner or the landowner's designee. The department, in consultation with the landowner, shall select the hunters pursuant to subsection (7)(b).

(4) A license or permit issued pursuant to this section:

(a) is nontransferable and may not be sold or bartered; and

(b) may only be used for hunting conducted on property that is opened to public access pursuant to this section.

(5) The department may prioritize distribution of licenses or permits under subsection (1) according to the areas the department determines are most in need of management.

(6) If the department determines that a landowner or landowner's designee has not abided by the restrictions and conditions of a license or permit issued pursuant to this section, that landowner or landowner's designee is not eligible to receive another license or permit pursuant to this section during any subsequent license year.

(7) (a) A contractual public elk hunting access agreement must define the areas that will be open to public elk hunting, the number of public elk hunting days that will be allowed on the property, and other factors that the department and the landowner consider necessary for the proper management of elk on the landowner's property. The agreement must include a process or methodology the landowner may use to select up to one-third of the public hunters required by subsection (3) and must reserve the right of the landowner to deny access to the landowner's property by a public hunter selected pursuant to subsection (7)(b) for cause, including but not limited to intoxication, violation of landowner conditions for use of the property, or previous misconduct on a landowner's property.

(b) Except for public hunters selected by the landowner pursuant to subsection (7)(a), the department shall select public hunters eligible to hunt on the landowner's property through a random drawing of holders of existing licenses or permits in that hunting district.

(8) (a) Licenses, permits, or combinations of the two issued under this section must be for wildlife management purposes and approved by the commission pursuant to its powers under 87-1-301.

(b) The commission shall prioritize approval of an application for a license, permit, or combination of the two based on the willingness of the landowner to allow, in either the regular hunting season or a shoulder hunting season, additional cow harvest by public hunters in addition to the number of public hunters required in subsection (3).

(9) For the purposes of this section, the following definitions apply:

(a) "Employee" means a person who works full time for the landowner as part of an active farm or ranch operation enrolled in the program.

(b) "Immediate family member" means a spouse, parent, grandparent, child, grandchild, sibling, niece, or nephew by blood, marriage, or legal adoption.

87-2-513. *(Effective March 1, 2026)* **Either-sex or antlerless elk license or permit for landowner who offers free public elk hunting — terms, conditions, and issuance.** (1) (a) The department may issue, at no cost to a landowner who provides free public elk hunting on the landowner's property and pursuant to this section, an either-sex or antlerless elk license, permit, or combination of the two as required in that hunting district for the landowner or the landowner's designee to hunt on the landowner's property or on private property leased by the landowner for agricultural purposes.

(b) A designee must be eligible for licensure under Title 87, chapter 2, and be an immediate family member, an authorized full-time employee of the landowner, or a person with a developmental disability or a physical disability as determined by the department.

(2) To be eligible for a license or permit pursuant to this section, a landowner:

(a) must own at least 640 acres of occupied elk habitat, except that smaller acreages are eligible if the department determines that site conditions exist to accommodate successful public hunting;

(b) must have entered into a contractual public elk hunting access agreement with the department in accordance with subsection (7) that allows public access for free public elk hunting on the landowner's property throughout the regular hunting season; and

(c) may not charge a fee or authorize a person to charge a fee for hunting access on the landowner's property.

(3) (a) For every three members of the public allowed to hunt under the contractual public elk hunting access agreement, the department may issue one license, permit, or combination of the two pursuant to subsection (1). The department may limit the total number of licenses and permits issued under this section.

(b) At least one of the public hunters must hold the equivalent license, permit, or combination of the two that is issued to the landowner or the landowner's designee. The department, in consultation with the landowner, shall select the hunters pursuant to subsection (7)(b).

(4) A license or permit issued pursuant to this section:

(a) is nontransferable and may not be sold or bartered; and

(b) may only be used for hunting conducted on property that is opened to public access pursuant to this section.

(5) The department may prioritize distribution of licenses or permits under subsection (1) according to the areas the department determines are most in need of management.

(6) If the department determines that a landowner or landowner's designee has not abided by the restrictions and conditions of a license or permit issued pursuant to this section, that landowner or landowner's designee is not eligible to receive another license or permit pursuant to this section during any subsequent license year.

(7) (a) A contractual public elk hunting access agreement must define the areas that will be open to public elk hunting, the number of public elk hunting days that will be allowed on the property, and other factors that the department and the landowner consider necessary for the proper management of elk on the landowner's property. The agreement must include a process

or methodology the landowner may use to select up to one-third of the public hunters required by subsection (3) and must reserve the right of the landowner to deny access to the landowner's property by a public hunter selected pursuant to subsection (7)(b) for cause, including but not limited to intoxication, violation of landowner conditions for use of the property, or previous misconduct on a landowner's property.

(b) Except for public hunters selected by the landowner pursuant to subsection (7)(a), the department shall select public hunters eligible to hunt on the landowner's property through a random drawing of holders of existing licenses or permits in that hunting district.

(8) (a) Licenses, permits, or combinations of the two issued under this section must be for wildlife management purposes and approved by the commission pursuant to its powers under 87-1-301.

(b) The commission shall prioritize approval of an application for a license, permit, or combination of the two based on the willingness of the landowner to allow, in either the regular hunting season or a shoulder hunting season, additional cow harvest by public hunters in addition to the number of public hunters required in subsection (3).

(9) For the purposes of this section, the following definitions apply:

(a) "Developmental disability" means a developmental disability as defined in 53-20-102.

(b) "Employee" means a person who works full-time for the landowner as part of an active farm or ranch operation enrolled in the program.

(c) "Immediate family member" means a spouse, parent, grandparent, child, grandchild, sibling, niece, or nephew by blood, marriage, or legal adoption.

(d) "Physical disability" means a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person's functional ability.

History: **En. Sec. 1, Ch. 519, L. 2001; amd. Sec. 10, Ch. 553, L. 2003; amd. Sec. 1, Ch. 37, L. 2019; amd. Sec. 11, Ch. 63, L. 2019; amd. Sec. 2, Ch. 94, L. 2021; amd. Sec. 4, Ch. 486, L. 2021; amd. Sec. 8, Ch. 552, L. 2021; amd. Sec. 1, Ch. 730, L. 2023; amd. Sec. 2, Ch. 359, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 359, L. 2025. Amendment effective March 1, 2026.

87-2-514. Nonresident relative of resident allowed to purchase nonresident licenses at reduced cost — definitions. (1) For the purposes of this section, the following definitions apply:

(a) "Nonresident relative of a resident" means a person born in Montana who is the natural or adoptive child, sibling, or parent of a resident but is not a resident.

(b) "Resident" means a resident as defined in 87-2-102.

(2) Except as otherwise provided in this chapter, a nonresident relative of a resident who meets the qualifications of subsection (4) may purchase the following at one-half the cost:

(a) a Class B nonresident fishing license;

(b) a Class B-1 nonresident upland game bird license;

(c) one of the following:

(i) a Class B-10 nonresident big game combination license;

(ii) a Class B-11 nonresident deer combination license; or

(iii) a nonresident elk-only combination license;

(d) if available:

(i) a Class B-8 nonresident deer B tag;

(ii) a Class B-12 nonresident antlerless elk B tag license.

(3) Class B-10 and Class B-11 licenses sold pursuant to subsection (2) are not included in the limit on the number of available Class B-10 and Class B-11 licenses issued pursuant to 87-2-505 and 87-2-510. Nonresident elk-only combination licenses sold pursuant to subsection (2) are in addition to nonresident elk-only combination licenses available for sale pursuant to 87-2-511.

(4) To qualify for a license pursuant to subsection (2), a nonresident relative of a resident shall apply at any department regional office or at the department's state office in Helena and present proof of the following:

(a) a birth certificate verifying the applicant's birth in Montana or documentation that the applicant was born to parents who were residents at the time of birth;

(b) evidence that the person previously held a Montana resident hunting or fishing license or has passed a hunter safety and education course in Montana pursuant to 87-2-105; and

(c) proof that the applicant is a nonresident relative of a resident.

(5) Of the fee paid for a hunting license purchased pursuant to subsection (2), 28.5% must be deposited in the account established in 87-1-290.

History: En. Sec. 1, Ch. 484, L. 2005; amd. Sec. 122, Ch. 2, L. 2009; amd. Sec. 2, Ch. 415, L. 2011; amd. Sec. 20, Ch. 449, L. 2015; amd. Sec. 2, Ch. 287, L. 2017; amd. Sec. 13, Ch. 387, L. 2017; amd. Sec. 12, Ch. 221, L. 2019; amd. Sec. 5, Ch. 170, L. 2021.

87-2-515. Repealed. Secs. 40, 42(1), Ch. 449, L. 2015.

History: En. Sec. 2, Ch. 484, L. 2005; amd. Sec. 3, Ch. 415, L. 2011.

87-2-516. *(Temporary)* **Drawing for Class A-9 and Class B-12 antlerless elk B tag licenses — landowner preference.** (1) In the event the number of valid applications for Class A-9 resident antlerless elk B tag licenses or Class B-12 nonresident antlerless elk B tag licenses for a hunting district exceeds the quota set by the department for the district, the department shall award the permits by a drawing.

(2) Subject to the limitations of subsection (4), in a hunting district where Class A-9 and Class B-12 licenses are issued, a corresponding Class A-9 or B-12 license must be issued, on application, to persons who:

(a) own 640 acres or more of contiguous land, at least some of which is used by elk as documented by the department; or

(b) own 160 acres or more of contiguous production agricultural land on which the department documented elk game damage within the last 2 years.

(3) A landowner who is eligible to receive a Class A-9 or Class B-12 license under subsection (2) may designate an immediate family member or an employee of the landowner to apply for the license. A corporation owning qualifying land under subsection (2) may designate one of its shareholders to apply for the Class A-9 or Class B-12 license.

(4) Subject to the management provisions provided in 87-1-321 through 87-1-325, 15% of the Class A-9 and Class B-12 licenses available each year in a hunting district must be available to landowners pursuant to subsection (2).

(5) For the purposes of this section, "employee" means a person who is paid by a landowner to do work and who has state or federal taxes withheld from the payment for the work provided.

87-2-516. *(Effective March 1, 2026)* **Drawing for Class A-9 and Class B-12 antlerless elk B tag licenses — landowner preference.** (1) In the event the number of valid applications for Class A-9 resident antlerless elk B tag licenses or Class B-12 nonresident antlerless elk B tag licenses for a hunting district exceeds the quota set by the department for the district, the department shall award the permits by a drawing.

(2) Subject to the limitations of subsection (4), in a hunting district where Class A-9 and Class B-12 licenses are issued, a corresponding Class A-9 or B-12 license must be issued, on application, to persons who:

(a) own 640 acres or more of contiguous land, at least some of which is used by elk as documented by the department; or

(b) own 160 acres or more of contiguous production agricultural land on which the department documented elk game damage within the last 2 years.

(3) A landowner who is eligible to receive a Class A-9 or Class B-12 license under subsection (2) may designate an immediate family member, an employee of the landowner, or a person with a developmental disability or a physical disability as determined by the department to apply for the license. A corporation owning qualifying land under subsection (2) may designate one of its shareholders to apply for the Class A-9 or Class B-12 license.

(4) Subject to the management provisions provided in 87-1-321 through 87-1-325, 15% of the Class A-9 and Class B-12 licenses available each year in a hunting district must be available to landowners pursuant to subsection (2).

(5) For the purposes of this section, "employee" means a person who is paid by a landowner to do work and who has state or federal taxes withheld from the payment for the work provided.

History: En. Sec. 1, Ch. 486, L. 2021; amd. Sec. 3, Ch. 359, L. 2025; amd. Sec. 1, Ch. 373, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 3, Ch. 359, L. 2025. Amendment effective March 1, 2026.

See 2025 Session Law for amendment made by sec. 1, Ch. 373, L. 2025. Amendment effective May 5, 2025.

87-2-517 and 87-2-518 reserved.

87-2-519. Class D-4—nonresident hound license. (1) Except as provided in subsections (5) and (6), in order for a nonresident to use a dog or dogs to aid in the pursuit or harvest of mountain lions or black bears, the nonresident shall first purchase, for a fee of $250, a Class D-4 nonresident hound license. To be eligible, the nonresident must be:

(a) at least 18 years of age or older or turn 18 years of age before or during the season for which the license is issued; and

(b) a holder of a nonresident conservation license and a Class D-1 nonresident mountain lion license or a special nonresident black bear license.

(2) Not more than 80 Class D-4 licenses may be sold in any 1 license year.

(3) A Class D-4 license must be used as authorized by this section and any rule adopted by the department or commission.

(4) A holder of a Class D-4 license may only pursue mountain lions or black bears for the purpose of personally harvesting an animal and may not assist any other person in the pursuit of a lion or bear for harvest.

(5) A nonresident is not required to have a Class D-4 license to use a dog or dogs to aid in the pursuit or harvest of mountain lions or black bears when the nonresident:

(a) is hunting with an outfitter licensed pursuant to Title 37, chapter 47, part 3; or

(b) is a nonresident landowner who owns 640 or more contiguous acres. Nonpaying guests of the nonresident landowner may also hunt and pursue mountain lions or black bears on the landowner's property and any adjacent public land within 2 miles of the landowner's property without a Class D-4 license.

(6) A nonresident outfitter or guide licensed pursuant to Title 37, chapter 47, part 3, is not required to have a Class D-4 license.

(7) After recovering the costs associated with license administration, the department shall use revenue collected from the sale of licenses pursuant to this section for the management, conservation, and monitoring of mountain lions and black bears.

History: En. Sec. 1, Ch. 378, L. 2019; amd. Sec. 7, Ch. 552, L. 2021; amd. Sec. 17, Ch. 507, L. 2023.

87-2-520. Supplemental game damage license — terms and conditions. (1) If at any time the department determines, in conjunction with a landowner or a designated lessee acting as an agent for a landowner, that game animals on the property are causing a level of damage to crops or other vegetation that merits removal of a specific number of game animals or that the taking of a specific number of game animals is advisable for game management purposes, the department may issue nontransferable resident and nonresident supplemental game damage hunting licenses for game management purposes on the property.

(2) Supplemental game damage hunting licenses may be issued only for antlerless animals and may be issued only for use on lands eligible for game damage assistance pursuant to 87-1-225. A landowner may not charge a fee to a hunter using a license obtained pursuant to this section.

(3) Supplemental game damage licenses may be issued to hunters as an alternative to issuing a kill permit to a landowner.

(4) (a) In a hunting district with unlimited license quotas, a landowner may designate the resident supplemental game damage license recipient on approval of issuance, including a recipient who has obtained an apprentice certificate pursuant to 87-2-810.

(b) In a hunting district with limited permit quotas, a landowner may designate up to 75% of the resident supplemental game damage license recipients, with the remainder of the licenses offered to hunters in a manner prescribed by the department.

(5) If additional supplemental game damage licenses are available, the department may issue those licenses to resident and nonresident hunters.

(6) A licensee shall pay the regular license price or an adjusted price set by the commission for any supplemental game management license issued pursuant to subsection (1). Issuance of a supplemental game damage license authorizes the licensee to hunt, take, and possess the game

animal designated on the license. All hunting under a supplemental game damage license must be conducted on the property designated on the license and in accordance with department regulations.

History: En. Sec. 1, Ch. 590, L. 2001; amd. Sec. 21, Ch. 449, L. 2015; amd. Sec. 2, Ch. 44, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 44, L. 2025. Amendment effective October 1, 2025.

87-2-521. Class D-3—resident hound training license. A person who is a resident, as defined in 87-2-102, and who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of a fee of $5, may receive a Class D-3 hound training license that entitles the holder to use a dog or dogs to aid in pursuing mountain lions, bobcats, or black bears during a training season established in 87-6-404(4).

History: En. Sec. 2, Ch. 126, L. 2003; amd. Sec. 96, Ch. 258, L. 2011; amd. Sec. 1, Ch. 359, L. 2021.

87-2-522. Nonresident youth combination licenses. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, and who is 12 years of age or older or will turn 12 years old before or during the season for which the license is issued and who is under 18 years of age may, upon payment of a fee of one-half of the cost of a regularly priced license and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office in Helena, Montana, to purchase:

(a) one of the following:

(i) a Class B-10 nonresident big game combination license;

(ii) a Class B-11 nonresident deer combination license; or

(iii) a nonresident elk-only combination license;

(b) if available:

(i) a Class B-8 nonresident deer B tag;

(ii) a Class B-12 nonresident antlerless elk B tag license.

(2) (a) When using a license issued pursuant to this section, the holder must be accompanied by an adult immediate family member who is the holder of a valid Class B-7, Class B-8, Class B-10, Class B-11, Class B-12, or nonresident elk-only combination license or who is the holder of a valid resident deer or elk tag. As used in this subsection, an adult immediate family member means an applicant's natural or adoptive parent, grandparent, brother, sister, stepparent, or legal guardian who is 18 years of age or older.

(b) An applicant shall provide the name and automated licensing system number of the adult immediate family member who will accompany the youth when applying for a license pursuant to this section.

(3) Class B-10 and Class B-11 licenses issued pursuant to this section are not included in the limit on the number of available Class B-10 and Class B-11 licenses issued pursuant to 87-2-505 and 87-2-510. Nonresident elk-only combination licenses issued pursuant to this section are in addition to nonresident elk-only combination licenses available for sale pursuant to 87-2-511.

History: En. Sec. 1, Ch. 470, L. 2005; amd. Sec. 1, Ch. 183, L. 2011; amd. Sec. 2, Ch. 104, L. 2013; amd. Sec. 22, Ch. 449, L. 2015; amd. Sec. 3, Ch. 287, L. 2017; amd. Sec. 1, Ch. 30, L. 2021.

87-2-523. Class E-1—resident wolf license. (1) Except as otherwise provided in this chapter and in subsection (2) of this section, a person who is a resident, as defined in 87-2-102, and who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of a fee of $12, may receive a Class E-1 license that entitles a holder who is 12 years of age or older to hunt a wolf and possess the carcass of the wolf as authorized by commission rules.

(2) A resident holder of a Class AAA combination sports license, regardless of whether it includes a Class A-6 bear tag, may purchase the first Class E-1 license the person obtains in that license year for $10.

(3) Fees collected pursuant to this section must be deposited and used in accordance with 87-1-623.

History: En. Sec. 1, Ch. 415, L. 2007; amd. Sec. 2, Ch. 390, L. 2011; amd. Sec. 3, Ch. 13, L. 2013; amd. Sec. 3, Ch. 297, L. 2013; amd. Sec. 1, Ch. 377, L. 2019; amd. Sec. 1, Ch. 405, L. 2019; amd. Sec. 1, Ch. 90, L. 2023.

87-2-524. Class E-2—nonresident wolf license. (1) Except as otherwise provided in this chapter and in subsection (2) of this section, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of a fee of $50, may receive a Class E-2 license that entitles a holder who is 12 years of age or older to hunt a wolf and possess the carcass of the wolf as authorized by commission rules.

(2) A nonresident holder of a valid Class B-10 nonresident big game combination license or Class B-11 deer combination license may purchase the first Class E-2 license the person obtains in that license year for one-half the cost.

(3) Fees collected pursuant to this section must be deposited and used in accordance with 87-1-623.

History: En. Sec. 2, Ch. 415, L. 2007; amd. Sec. 3, Ch. 390, L. 2011; amd. Sec. 4, Ch. 13, L. 2013; amd. Sec. 4, Ch. 297, L. 2013; amd. Sec. 1, Ch. 351, L. 2019; amd. Sec. 2, Ch. 90, L. 2023.

87-2-525. Nonresident college student licenses. (1) Subject to the provisions of subsection (2), a student who is not a resident, as defined in 87-2-102, and who meets the qualifications of subsection (3) may purchase discounted hunting and fishing licenses as follows:

(a) If the student's state of residence does not offer resident-rate licenses to Montanans who are full-time college students in that state, the student may purchase the following for one-half of the cost:

(i) one of the following:

(A) a Class B-10 nonresident big game combination license;

(B) a Class B-11 nonresident deer combination license; or

(C) a nonresident elk-only combination license;

(ii) if available:

(A) a Class B-8 nonresident deer B tag; and

(B) a Class B-12 nonresident antlerless elk B tag license.

(b) If the student's state of residence offers resident-rate licenses to Montanans who are full-time college students in that state and as long as a drawing for the equivalent resident license is not required, the student may purchase for the same price as the equivalent resident license:

(i) (A) any of the following:

(I) a Class B-30 nonresident college student fishing license;

(II) a Class B-31 nonresident college student upland game bird license;

(III) a Class B-32 nonresident college student deer A tag; and

(IV) a Class B-33 nonresident college student elk tag; or

(B) a Class B-34 nonresident college student big game combination license that entitles the holder to all the privileges of the licenses listed in subsection (1)(b)(i)(A) and a nonresident conservation license;

(ii) a Class B-35 nonresident college student migratory game bird license;

(iii) a Class B-36 nonresident college student turkey tag;

(iv) a Class B-37 nonresident college student deer B tag; and

(v) a Class B-38 nonresident college student antlerless elk B tag.

(2) (a) The holder of a license purchased pursuant to this section is entitled to use that license to hunt or fish, as relevant, and to possess the carcass of the species taken in the manner prescribed by the rules and regulations of the commission and department.

(b) A student may not purchase a license pursuant to this section for more than 4 license years.

(3) (a) To qualify for a license issued pursuant to this section, a student may not possess or apply for any resident hunting, fishing, or trapping licenses from another state or country or exercise resident hunting, fishing, or trapping privileges in another state or country and must:

(i) be currently enrolled as a full-time undergraduate student at a postsecondary educational institution in Montana, with 12 credits or more being considered full-time;

(ii) be currently enrolled as a full-time graduate student at a postsecondary educational institution in the state, with 9 credits or more being considered full-time unless otherwise defined by the academic department in which the student is enrolled; or

(iii) (A) have a natural or adoptive parent who currently is a Montana resident, as defined in 87-2-102;

(B) have a high school diploma from a Montana public, private, or home school or can provide certified verification that the applicant has a high school equivalency diploma issued in Montana; and

(C) be currently enrolled as a full-time student at a postsecondary educational institution in another state.

(b) A student is not eligible to receive a license pursuant to this section if the student is enrolled in a degree program that is exclusively delivered online.

(4) Application for a license issued pursuant to this section may be made after the second Monday in September. To qualify, the applicant shall supply a copy of a valid student identification card and verification of current full-time enrollment at a postsecondary educational institution as required by the department.

(5) Class B-10 and Class B-11 licenses issued pursuant to this section are not included in the limit on the number of available Class B-10 and Class B-11 licenses issued pursuant to 87-2-505 and 87-2-510. Nonresident elk-only combination licenses issued pursuant to this section are in addition to nonresident elk-only combination licenses available for sale pursuant to 87-2-511.

History: En. Sec. 1, Ch. 174, L. 2009; amd. Sec. 39, Ch. 55, L. 2015; amd. Sec. 23, Ch. 449, L. 2015; amd. Sec. 4, Ch. 287, L. 2017; amd. Sec. 1, Ch. 368, L. 2021; amd. Sec. 1, Ch. 69, L. 2023; amd. Sec. 18, Ch. 507, L. 2023.

87-2-526. License for nonresident to hunt with resident sponsor or family member — use of license revenue. (1) The department may offer for sale 500 B-10 nonresident big game combination licenses, 500 B-11 nonresident deer combination licenses, and 500 nonresident elk-only combination licenses that must be used as provided in this section and as authorized by department rules. Sale of licenses pursuant to this section does not affect the license quotas established for Class B-10 and Class B-11 licenses in 87-2-505 and 87-2-510 or the number of nonresident elk-only combination licenses available pursuant to 87-2-511. The price of licenses sold under this subsection is one-half of the fee set for the equivalent license in 87-2-505, 87-2-510, or 87-2-511.

(2) A license authorized in subsection (1) may be used only by an adult nonresident family member of a resident who sponsors the license application and who meets the qualifications of subsection (3). The nonresident family member must have completed a Montana hunter safety and education course and have previously purchased a resident hunting license. A nonresident family member who receives a license pursuant to subsection (1) must be accompanied in the field by a sponsor or family member who meets the qualifications of subsection (3).

(3) To qualify as a sponsor or family member who will accompany a nonresident licensed under subsection (1), a person must be a resident, as defined in 87-2-102, who is 18 years old or older and possesses a current resident hunting license and who is related to the nonresident within the second degree of kinship by blood or marriage. The second degree of kinship includes a mother, father, brother, sister, son, daughter, spouse, grandparent, grandchild, brother-in-law, sister-in-law, son-in-law, daughter-in-law, father-in-law, mother-in-law, stepfather, stepmother, stepbrother, stepsister, stepson, and stepdaughter. The sponsor shall list on the license application the names of family members who are eligible to hunt with the nonresident hunter.

(4) If the department receives more applications for licenses than the number that are available under subsection (1), the department shall conduct a drawing for the licenses. Applicants who are unsuccessful in the drawing must be entered in the general drawing for a nonresident license provided under 87-2-505 or 87-2-510, as applicable.

(5) All money received from the sale of licenses under subsection (1) must be deposited in a separate account and must be used by the department to acquire public hunting access to inaccessible public land, which may include obtaining hunting access through private land to inaccessible public land.

History: En. Sec. 1, Ch. 345, L. 2009; amd. Sec. 1, Ch. 107, L. 2013; amd. Sec. 24, Ch. 449, L. 2015; amd. Sec. 5, Ch. 287, L. 2017; amd. Sec. 1, Ch. 24, L. 2021.

87-2-527 through 87-2-529 reserved.

87-2-530. Class F—nonresident wildlife management area shed hunting license. (1) A person who is not a resident as defined in 87-2-102, on payment of a $50 fee, is entitled to receive a Class F license that authorizes the holder of the license to shed hunt as defined in 87-1-201 in a wildlife management area.

(2) A person found in violation of this section:

(a) for a first offense, must be given a warning;

(b) for a second offense, is guilty of a misdemeanor and shall be fined not more than twice the cost of a Class F license. In addition, the person, on conviction or forfeiture of bond or bail, may be subject to forfeiture of any current shed hunting license and the privilege to shed hunt in a wildlife management area for a period of time set by the court.

(c) for a third offense, is guilty of a misdemeanor and shall be fined not more than $500. In addition, the person, on conviction or forfeiture of bond or bail, shall forfeit any current shed hunting license and the privilege to shed hunt in a wildlife management area for a period of time set by the court.

History: **En. Sec. 1, Ch. 748, L. 2025.**

Compiler's Comments

Effective Date: This section is effective October 1, 2025.

Part 6
Furbearer Licenses

Part Cross-References

Seasonal rules adopted annually, 2-4-102.
Powers and duties of Department of Fish, Wildlife, and Parks, 87-1-201.
Posting and publication of orders, rules, and regulations, 87-1-202.
Unlawful to trap without license, 87-6-301.

87-2-601. Class C—trapper's license. Except as otherwise provided in this chapter, a resident, as defined in 87-2-102, who is 12 years of age or older, upon making application and payment of a fee of $20 to the department, may receive a Class C license that authorizes the holder to trap fur-bearing animals within the state at the times and in the manner provided by law and the regulations of the commission and at the places that may be designated in the license. This license includes the Class C-4 license to hunt bobcat, wolverine, and Canada lynx established in 87-2-606.

History: **En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(14); amd. Sec. 12, Ch. 478, L. 1979; amd. Sec. 7, Ch. 680, L. 1983; amd. Sec. 2, Ch. 329, L. 1985; amd. Sec. 1, Ch. 321, L. 2003; amd. Sec. 6, Ch. 170, L. 2021.**

87-2-602. Class C-1—landowner's trapping license. Except as otherwise provided in this chapter, any individual who owns land in this state or any tenant or member of the immediate family of the owner or tenant, upon making application to the department and payment of the fee of $1, may receive a Class C-1 license that entitles the holder to trap any fur-bearing animal and to hunt bobcat, wolverine, and lynx on land owned or leased by the individual or the individual's immediate family at times and in a manner that is lawful under the laws of the state and the regulations of the department and at places that may be designated in the license.

History: **En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(15); amd. Sec. 13, Ch. 478, L. 1979; amd. Sec. 2845, Ch. 56, L. 2009.**

87-2-603. Class C-2—nonresident trapper's license — reciprocity. (1) A person not a resident, as defined in 87-2-102, who is 12 years of age or older, on making application and payment of a fee of $250 to the department, is entitled to a nonresident trapper's license that authorizes the holder to trap and snare predatory animals, nongame wildlife, and, subject to the provisions of subsection (2), certain fur-bearing species within the state. The trapping or snaring is permitted only after October 15 of each license year and in the manner provided by law and the rules of the commission and at the places that may be designated in the license.

(2) A person seeking a license to trap fur-bearing species under this subsection (2) shall:

(a) provide a notarized affidavit on a form approved by the department listing the person's legal residence, including the state;

(b) (i) provide documentation that the person's resident state issues nonresident trapping licenses that allow Montana residents to trap the same species for which the person seeks to trap in Montana; or

(ii) attest on the affidavit that the person's resident state does not offer reciprocity for trapping the fur-bearing species the person seeks to trap in Montana because the species does not exist in the resident state; and

(c) provide evidence that the person completed a trapping education course that is equivalent to the trapping education requirements for residents.

History: En. Sec. 2, Ch. 255, L. 1979; amd. Sec. 3, Ch. 329, L. 1985; amd. Sec. 2, Ch. 321, L. 2003; amd. Sec. 1, Ch. 466, L. 2023.

Cross-References

Unlawful to trap without license, 87-6-301.

87-2-604. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 3, Ch. 255, L. 1979; amd. Sec. 2846, Ch. 56, L. 2009.

87-2-605. Class C-3—youth trapping license. Except as otherwise provided in this chapter, a resident, as defined in 87-2-102, who is 6 years of age or older and less than 12 years of age, upon making application to the department, may receive a Class C-3 license that authorizes the holder to trap fur-bearing animals, the trapping of which has not been restricted by the commission, within the state at the times and in the manner provided by law and the regulations of the commission and at the places that may be designated in the license.

History: En. Sec. 1, Ch. 329, L. 1985; amd. Sec. 3, Ch. 321, L. 2003.

87-2-606. Class C-4—resident license to hunt bobcat, wolverine, and Canada lynx. Except as otherwise provided in this chapter, a resident, as defined in 87-2-102, who is 12 years of age or older, upon making application and payment of a fee of $20 to the department, may receive a Class C-4 license that authorizes the holder to hunt bobcat, wolverine, and Canada lynx within the state at the times and in the manner provided by law and the regulations of the commission and at the places that may be designated in the license.

History: En. Sec. 2, Ch. 170, L. 2021.

Part 7
Special and Combination Licenses and Nongame Certificate

Part Cross-References

Seasonal rules adopted annually, 2-4-102.
Powers and duties of Department of Fish, Wildlife, and Parks, 87-1-201.
Posting and publication of orders, rules, and regulations, 87-1-202.

87-2-701. Special licenses. (1) An applicant who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may apply for a special license that, in the judgment of the department, is to be issued and shall pay the following fees:

(a) moose—resident, $125; nonresident, $1,250;
(b) mountain goat—resident, $125; nonresident, $1,250;
(c) mountain sheep—resident, $125; nonresident, $1,250;
(d) antelope—resident, $14; nonresident, $200;
(e) grizzly bear—resident, $150; nonresident, $1,000;
(f) black bear—nonresident, $350;
(g) wild buffalo or bison—resident, $125; nonresident, $1,250.

(2) If a holder of a valid special grizzly bear license who is 12 years of age or older kills a grizzly bear, the person shall purchase a trophy license for a fee of $50 within 10 days after the date of the kill. The trophy license authorizes the holder to possess and transport the trophy.

(3) Except as provided in 87-5-302 for special grizzly bear licenses, special licenses must be issued in a manner prescribed by the department.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(13); amd. Sec. 1, Ch. 100, L. 1979; amd. Sec. 14, Ch. 478, L. 1979; amd. Sec. 10, Ch. 554, L. 1981; amd. Sec. 8, Ch. 680, L. 1983; amd. Sec. 2, Ch. 568, L. 1985; amd. Sec. 7, Ch. 598, L. 1987; amd. Sec. 1, Ch. 401, L. 1991; amd. Sec. 13, Ch. 592, L. 1991; amd. Sec. 2, Ch. 263, L. 1995; amd. Sec. 12, Ch. 533, L. 1999; amd. Sec. 8, Ch. 528, L. 2001; amd. Sec. 4, Ch. 604, L. 2003; amd. Sec. 13, Ch. 585, L. 2005; amd. Sec. 2, Ch. 292, L. 2011; amd. Sec. 25, Ch. 449, L. 2015; amd. Sec. 13, Ch. 221, L. 2019.

Cross-References

Portion of fee to fund wildlife habitat, 87-1-242.
Wildlife conservation license prerequisite, 87-2-201.
Auction of male mountain sheep license, 87-2-722.
Auction of male Shiras moose license, 87-2-724.

87-2-702. Restrictions on special licenses — availability of bear and mountain lion licenses. (1) A person who has killed or taken any game animal, except a deer, an elk, or an antelope, during the current license year is not permitted to receive a special license under this chapter to hunt or kill a second game animal of the same species.

(2) The commission may require applicants for special permits authorized by this chapter to obtain a valid big game license for that species for the current year prior to applying for a special permit.

(3) Except as provided in 87-2-815, a person may take only one grizzly bear in Montana with a license authorized by 87-2-701.

(4) (a) Except as provided in 87-1-271(2), 87-1-275, and 87-2-815, a person who receives a moose, mountain goat, or limited mountain sheep license, as authorized by 87-2-701, with the exception of an antlerless moose or an adult ewe game management license issued under 87-2-104, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection (4)(a), "limited mountain sheep license" means a license that is valid for an area in which the number of licenses issued is restricted.

(b) Except as provided in 87-1-271(2) and 87-2-815, a person who takes a legal ram mountain sheep with at least one horn that is equal to or greater than a three-fourths curl using an unlimited mountain sheep license or a population management license issued pursuant to 87-2-701 is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection (4)(b), "unlimited mountain sheep license" means a license that is valid for an area in which the number of licenses issued is not restricted.

(5) An application for a wild buffalo or bison license must be made on the same form and is subject to the same license application deadline as the special license for moose, mountain goat, and mountain sheep.

History: En. Sec. 2, Ch. 267, L. 1955; amd. Sec. 1, Ch. 65, L. 1963; amd. Sec. 1, Ch. 72, L. 1969; amd. Sec. 1, Ch. 48, L. 1971; amd. Sec. 3, Ch. 167, L. 1973; amd. Sec. 1, Ch. 195, L. 1973; amd. Sec. 28, Ch. 9, L. 1977; R.C.M. 1947, 26-202.2(1), (2); amd. Sec. 15, Ch. 478, L. 1979; amd. Sec. 11, Ch. 554, L. 1981; amd. Sec. 1, Ch. 241, L. 1987; amd. Sec. 3, Ch. 431, L. 1989; amd. Sec. 1, Ch. 57, L. 1991; amd. Sec. 1, Ch. 115, L. 1995; amd. Sec. 4, Ch. 201, L. 2003; amd. Sec. 5, Ch. 471, L. 2005; amd. Sec. 3, Ch. 25, L. 2007; amd. Sec. 1, Ch. 136, L. 2009; amd. Sec. 2, Ch. 54, L. 2013; amd. Sec. 1, Ch. 151, L. 2013; amd. Sec. 1, Ch. 186, L. 2017; amd. Sec. 130, Ch. 261, L. 2021; amd. Sec. 9, Ch. 552, L. 2021; amd. Sec. 2, Ch. 267, L. 2023; amd. Sec. 12, Ch. 460, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 12, Ch. 460, L. 2025. Amendment effective October 1, 2025.

87-2-703. Repealed. Sec. 16(1), Ch. 554, L. 1981.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167,

L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(21); amd. Sec. 16, Ch. 478, L. 1979.

87-2-704. Regulation of special elk permits. (1) The department may:

(a) provide for the refund of resident elk tag license fees to persons applying for special elk permits in hunting districts where there is no general elk hunting and set time limits and describe area restrictions; and

(b) designate special elk permit areas where priority will be given to applicants who have not held special elk permits for a period of years to be determined by the department.

(2) The department shall provide that a person who is issued a special elk permit to hunt antlerless elk during the regular hunting season is:

(a) limited to the hunting and taking of only an antlerless elk in the hunting district or portion of a hunting district where the permit is valid, except that in a hunting district or portion of a district where the holder of a general elk license is allowed to hunt antlerless elk during certain times, the holder of a special elk permit to hunt antlerless elk in that district or portion of a district may also hunt any elk authorized under the regulations for a general elk license during those same times; and

(b) entitled to the general elk hunting privileges for a holder of a Class A-5 license in all other hunting districts.

(3) The commission may establish a waiting period during which a person who has received a special elk permit that is valid for an antlered bull may not receive another special elk permit that is valid for an antlered bull. The commission may specify which special elk permits are subject to the waiting period, by hunting district or portion of a hunting district.

(4) The fee for a special elk permit is $4.

(5) The department may adopt rules necessary to implement this section.

History: En. 26-202.7 by Sec. 2, Ch. 546, L. 1975; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.7; amd. Sec. 1, Ch. 358, L. 1991; amd. Sec. 14, Ch. 592, L. 1991; amd. Sec. 5, Ch. 201, L. 2003; amd. Sec. 14, Ch. 585, L. 2005; amd. Sec. 1, Ch. 175, L. 2009.

Cross-References

Resident elk license and special resident and nonresident antlerless elk license, 87-2-501.

87-2-705. *(Temporary)* **Drawing for special elk permits.** (1) In the event the number of valid applications for special elk permits for a hunting district exceeds the quota set by the department for the district, these permits shall be awarded by a drawing. The department shall provide for those persons making valid application for special elk permits a method of selecting first, second, and third choice hunting districts for any drawing held pursuant to this section.

(2) Subject to the limitation of subsection (4), a person who owns 640 acres or more of contiguous land, at least some of which is used by elk as documented by the department, in a hunting district where elk permits are awarded under this section shall be issued, upon application, a permit to hunt elk in the hunting district under the terms and conditions of the permit.

(3) An applicant who receives a permit under subsection (2) may designate that the permit be issued to an immediate family member or an employee of the landowner who works full time and year-round as part of the active farm or ranch operation. A corporation owning qualifying land under subsection (2) may designate one of its shareholders to receive the permit.

(4) Fifteen percent of the special elk permits available each year under this section in a hunting district must be available to landowners under subsection (2).

(5) The department may promulgate the rules necessary to implement this section.

87-2-705. *(Effective March 1, 2026)* **Drawing for special elk permits.** (1) In the event the number of valid applications for special elk permits for a hunting district exceeds the quota set by the department for the district, these permits shall be awarded by a drawing. The department shall provide for those persons making valid application for special elk permits a method of selecting first, second, and third choice hunting districts for any drawing held pursuant to this section.

(2) Subject to the limitation of subsection (4), a person who owns 640 acres or more of contiguous land, at least some of which is used by elk as documented by the department, in

a hunting district where elk permits are awarded under this section shall be issued, upon application, a permit to hunt elk in the hunting district under the terms and conditions of the permit.

(3) An applicant who receives a permit under subsection (2) may designate that the permit be issued to an immediate family member, an employee of the landowner who works full time and year-round as part of the active farm or ranch operation, or a person with a developmental disability or a physical disability as determined by the department. A corporation owning qualifying land under subsection (2) may designate one of its shareholders to receive the permit.

(4) Fifteen percent of the special elk permits available each year under this section in a hunting district must be available to landowners under subsection (2).

(5) The department may promulgate the rules necessary to implement this section.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(16)(h); amd. Sec. 12, Ch. 554, L. 1981; amd. Sec. 1, Ch. 623, L. 1987; amd. Sec. 1, Ch. 290, L. 1989; amd. Sec. 2, Ch. 418, L. 1991; amd. Sec. 4, Ch. 359, L. 2025; amd. Sec. 2, Ch. 373, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 4, Ch. 359, L. 2025. Amendment effective March 1, 2026.

See 2025 Session Law for amendment made by sec. 2, Ch. 373, L. 2025. Amendment effective May 5, 2025.

87-2-706. Drawing for special antelope licenses — licenses for those with life-threatening illness. (1) In the event that the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the department for the district, the licenses must be awarded by a drawing. The department shall provide for those persons making valid application for special antelope licenses a method of selecting first, second, and third choice hunting districts for any drawing held pursuant to this section.

(2) The department shall reserve for applicants who are nonambulatory and have a permanent physical disability, as determined by the department, up to 25 of the total special antelope licenses authorized for sale in the state, excepting those licenses issued pursuant to 87-2-817(1), for use in the district designated by the commission. If the number of valid disabled applicants exceeds the number of licenses available, the department may hold a drawing in which all applicants have an equal chance of being selected.

(3) (a) The department may issue a special antelope license to a resident or nonresident who has been diagnosed with a life-threatening illness unless the person qualifies for a license pursuant to 87-2-805. As used in this subsection (3), "life-threatening illness" means any progressive, degenerative, or malignant disease or condition that results in a significant threat, likelihood, or certainty that the person's life expectancy will not extend more than 1 year from the date of the request for the license unless the course of the disease is interrupted or abated.

(b) To qualify for the license, the department must receive documentation that the person has been diagnosed with a life-threatening illness from a licensed physician.

(c) The license may be issued on a one-time basis for one hunting season.

(d) In exercising hunting privileges, the person shall conduct all hunting within the terms and conditions of the license issued.

(e) The department may issue up to 25 licenses pursuant to this subsection (3) annually. These licenses do not count against any quota set by the department. Licenses issued pursuant to this subsection (3) do not count against the number of special antelope licenses reserved for people with permanent disabilities as provided in subsection (2).

(4) The department may promulgate rules that are necessary to implement this section.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(16)(g); amd. Sec. 13, Ch. 554, L. 1981; amd. Sec. 1, Ch. 326, L. 1987; amd. Sec. 77, Ch. 472, L. 1997; amd. Sec. 2, Ch. 556, L. 2005; amd. Sec. 1, Ch. 68, L. 2011; amd. Sec. 26, Ch. 449, L. 2015.

87-2-707. Repealed. Sec. 20, Ch. 478, L. 1979.

History: En. Sec. 1, Ch. 239, L. 1965; amd. Sec. 2, Ch. 319, L. 1967; amd. Sec. 4, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.5(1).

87-2-708. Class A-2—special bow and arrow license. A holder of a valid hunting license for which a special archery season is set by the department may receive, upon payment of an additional fee of $10, a Class A-2 license that authorizes the holder to hunt with bow and arrow the game animals authorized by the licenses held and to possess the carcass of the game animals during seasons and in areas designated by the department.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(3); amd. Sec. 2, Ch. 220, L. 1979; amd. Sec. 17, Ch. 478, L. 1979; amd. Sec. 2, Ch. 210, L. 1987; amd. Sec. 15, Ch. 592, L. 1991; amd. Sec. 23, Ch. 417, L. 1995; amd. Sec. 15, Ch. 585, L. 2005.

87-2-709 and 87-2-710 reserved.

87-2-711. *(Temporary)* **Class AAA—combination sports license.** (1) Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued is entitled to:

(a) a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted to holders of Class A, A-1, A-3, and A-5 licenses upon payment of the sum of $62; or

(b) a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted in subsection (1)(a) and the additional rights granted to holders of a Class A-6 tag upon payment of the sum of $77.

(2) The department may furnish each holder of a combination sports license an appropriate decal.

87-2-711. *(Effective March 1, 2026)* **Class AAA—combination sports license.** (1) Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued is entitled to:

(a) a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted to holders of Class A, A-1, A-3, and A-5 licenses upon payment of the sum of $64.50; or

(b) a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted in subsection (1)(a) and the additional rights granted to holders of a Class A-6 tag upon payment of the sum of $79.50.

(2) The department may furnish each holder of a combination sports license an appropriate decal.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(18); amd. Sec. 6, Ch. 255, L. 1985; amd. Sec. 8, Ch. 598, L. 1987; amd. Sec. 8, Ch. 636, L. 1987; amd. Secs. 8, 9, Ch. 601, L. 1989; amd. Sec. 16, Ch. 592, L. 1991; amd. Sec. 3, Ch. 263, L. 1995; amd. Sec. 7, Ch. 187, L. 1997; amd. Sec. 13, Ch. 533, L. 1999; amd. Sec. 7, Ch. 216, L. 2001; amd. Sec. 2, Ch. 573, L. 2005. amd. Sec. 16, Ch. 585, L. 2005; amd. Sec. 1, Ch. 406, L. 2007; amd. Secs. 27, 28, Ch. 449, L. 2015; amd. Sec. 14, Ch. 387, L. 2017; amd. Sec. 14, Ch. 221, L. 2019; amd. Sec. 8, Ch. 676, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 8, Ch. 676, L. 2025. Amendment effective March 1, 2026.

Cross-References

Portion of fee to fund wildlife habitat, 87-1-242.

Funding of upland game bird enhancement program, 87-1-246.

River restoration program, 87-1-255 through 87-1-259.

87-2-712. Repealed. Sec. 20, Ch. 478, L. 1979.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(7).

87-2-713. Terminated. Sec. 3, Ch. 109, L. 1989.

History: En. Sec. 1, Ch. 109, L. 1989.

87-2-714. *(Temporary)* **Landowner preference for Class B-10 nonresident big game combination license.** (1) Subject to the provisions of subsection (6), 15% of licenses issued under 87-2-505 may be placed in a landowner preference pool for nonresident landowners to hunt only on property the landowner owns in fee title or on other private property the landowner leases to produce a crop as defined in 80-8-102.

(2) A nonresident landowner of record may designate an immediate family member to receive the license issued under this section. For purposes of this section, an immediate family member means a spouse, parent, grandparent, child, grandchild, sibling, niece, or nephew of the landowner by blood, marriage, or legal adoption.

(3) (a) To qualify to receive a Class B-10 license pursuant to this section, the landowner must own at least 2,500 contiguous acres in fee title. Subject to the provisions of subsections (3)(b) and (5), for each additional 2,500 contiguous acres owned by the landowner, the department may issue to the landowner or the landowner's immediate family members an additional Class B-10 license up to a maximum of five Class B-10 licenses per qualifying landowner.

(b) An individual may not hold more than one Class B-10 license.

(4) Applicants must pay the full Class B-10 license fee established in 87-2-505.

(5) If there is a sufficient number of licenses set forth in subsection (1) and multiple applications made per qualifying landowner, the department shall issue one license to each qualifying landowner or the landowner's immediate family member before it issues a second or subsequent license to any landowner or the landowner's immediate family member. All Class B-10 licenses not issued pursuant to this section shall be returned to the general draw pool available to all applicants pursuant to 87-2-505.

(6) The commission may, by rule, limit the overall number of licenses that can be provided to landowners or their immediate family members pursuant to this section to less than 15% of those available pursuant to 87-2-505.

(7) A landowner who receives a license pursuant to this section and who was enrolled in a department-administered private land hunting access program in the previous license year may purchase an additional bonus point for an elk or deer license or permit drawing for the fee established in 87-2-113.

87-2-714. *(Effective March 1, 2026)* **Landowner preference for Class B-10 nonresident big game combination license.** (1) Subject to the provisions of subsection (6), 15% of licenses issued under 87-2-505 may be placed in a landowner preference pool for nonresident landowners to hunt only on property the landowner owns in fee title or on other private property the landowner leases to produce a crop as defined in 80-8-102.

(2) A nonresident landowner of record may designate an immediate family member, an employee, or a person with a developmental disability or a physical disability as determined by the department to receive the license issued under this section.

(3) (a) To qualify to receive a Class B-10 license pursuant to this section, the landowner must own at least 2,500 contiguous acres in fee title. Subject to the provisions of subsections (3)(b) and (5), for each additional 2,500 contiguous acres owned by the landowner, the department may issue to the landowner or the landowner's designee an additional Class B-10 license up to a maximum of five Class B-10 licenses per qualifying landowner.

(b) An individual may not hold more than one Class B-10 license.

(4) Applicants must pay the full Class B-10 license fee established in 87-2-505.

(5) If there is a sufficient number of licenses set forth in subsection (1) and multiple applications made per qualifying landowner, the department shall issue one license to each qualifying landowner or the landowner's designee before it issues a second or subsequent license

to any landowner or the landowner's designee. All Class B-10 licenses not issued pursuant to this section shall be returned to the general draw pool available to all applicants pursuant to 87-2-505.

(6) The commission may, by rule, limit the overall number of licenses that can be provided to landowners or their designees pursuant to this section to less than 15% of those available pursuant to 87-2-505.

(7) A landowner who receives a license pursuant to this section and who was enrolled in a department-administered private land hunting access program in the previous license year may purchase an additional bonus point for an elk or deer license or permit drawing for the fee established in 87-2-113.

(8) For the purposes of this section, the following definitions apply:

(a) "Developmental disability" means a developmental disability as defined in 53-20-102.

(b) "Employee" means a person who works full-time and year-round for the landowner as part of the active farm or ranch operation enrolled in the block management program.

(c) "Immediate family member" means a spouse, parent, grandparent, child, grandchild, sibling, niece, or nephew of the landowner by blood, marriage, or legal adoption.

(d) "Physical disability" means a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person's functional ability.

History: En. Sec. 1, Ch. 487, L. 2023; amd. Sec. 5, Ch. 359, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 359, L. 2025. Amendment effective March 1, 2026.

87-2-715 through 87-2-720 reserved.

87-2-721. Repealed. Sec. 16(1), Ch. 554, L. 1981.

History: En. 26-202.8 by Sec. 3, Ch. 546, L. 1975; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.8.

87-2-722. Auction of mountain sheep license. (1) The commission may issue one male mountain sheep license each year through a competitive auction. The commission shall promulgate rules for the use of the license and conduct of the auction. A wildlife conservation organization involved in the conservation of mountain sheep may be authorized by the commission to conduct the license auction, in which case the authorized organization may retain proceeds of the sale, not to exceed 10%, to cover reasonable auction expenses.

(2) All proceeds remaining from the auction, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the substantial benefit of mountain sheep. The proceeds from the auction must be used in addition to any other funds the department uses for the management of mountain sheep. The department shall report the use or investment of auction proceeds to the office of budget and program planning as a part of the information required by 17-7-111.

History: En. Sec. 1, Ch. 414, L. 1985; amd. Sec. 50, Ch. 349, L. 1993.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

87-2-723. Repealed. Sec. 4, Ch. 401, L. 1991.

History: En. Secs. 3, 4, Ch. 568, L. 1985.

87-2-724. Auction of Shiras moose license. (1) The commission may issue one male Shiras moose license each year through a competitive auction. The commission shall promulgate rules for the use of the license and conduct of the auction. A wildlife conservation organization involved in the conservation of moose may be authorized by the commission to conduct the license auction, in which case the authorized organization may retain up to 10% of the proceeds of the sale to cover reasonable auction expenses.

(2) All proceeds remaining from the auction, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the substantial benefit of moose. The proceeds from the auction must be used in addition to any other funds the department uses for the management of moose.

History: En. Sec. 1, Ch. 174, L. 1987; amd. Sec. 60, Ch. 112, L. 1991; amd. Sec. 51, Ch. 349, L. 1993.

87-2-725. Auction or lottery of mountain goat license — rules. (1) The commission may issue one mountain goat license each year through a competitive auction or lottery. The commission shall promulgate rules for the use of the license and conduct of the auction or lottery. A wildlife conservation organization involved in the conservation of mountain goats may be authorized to conduct the license auction or lottery, in which case the authorized organization may retain up to 10% of the proceeds of the sale to cover reasonable auction or lottery expenses.

(2) All proceeds remaining from the auction or lottery, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the substantial benefit of mountain goats. The proceeds from the auction or lottery must be used in addition to any other funds that the department uses for the management of mountain goats.

History: En. Sec. 1, Ch. 40, L. 2005.

87-2-726 through 87-2-729 reserved.

87-2-730. Special wild buffalo license — regulation. (1) The public hunting of wild buffalo or bison that have been designated as a species in need of disease control under 81-2-120 is permitted only when authorized by the department of livestock under the provisions set forth in 81-2-120.

(2) The department may issue special licenses to hunt wild buffalo or bison designated as a species in need of disease control when authorized by the department of livestock.

(3) The department shall adopt rules in cooperation with the department of livestock. The rules must provide for:

(a) license drawing procedures;

(b) application fees consistent with 87-2-113;

(c) notification of license recipients as to when and where they may hunt;

(d) fair chase hunting of wild buffalo or bison, including requirements that hunting be conducted on foot and away from public roads and that there be no designation of specific wild buffalo or bison to be hunted;

(e) means of taking and handling of carcasses in the field, which must include provisions for public safety because of the potential for the spread of infectious disease;

(f) the use of bows and arrows and other hunting arms;

(g) tagging requirements for carcasses, skulls, and hides;

(h) possession limits;

(i) requirements for transportation and exportation; and

(j) requirements and criteria for authorization by the state veterinarian and the department of livestock of any public hunting.

History: En. Sec. 1, Ch. 604, L. 2003; amd. Sec. 2, Ch. 221, L. 2011; amd. Sec. 1, Ch. 181, L. 2013; amd. Sec. 2, Ch. 298, L. 2013.

87-2-731. Terminated. Sec. 5, Ch. 378, L. 2005.

History: En. Sec. 1, Ch. 378, L. 2005; amd. Sec. 3, Ch. 221, L. 2011.

87-2-732. Allocation of wild buffalo licenses to tribes for traditional purposes. (1) If the commission authorizes the issuance of 40 or more special wild buffalo licenses in any license year, the department shall also issue special licenses to two members of each tribe designated in subsection (3) to hunt wild buffalo during the regular season for wild buffalo in accordance with this section and department rules and regulations. The licenses must be issued free of charge.

(2) Wild buffalo taken with special licenses issued pursuant to this section must be harvested by tribal members for traditional purposes in accordance with the traditional ceremonies of each tribe. All parts of wild buffalo taken pursuant to this section may be possessed and used by each designated tribe in the manner that the tribe sees fit. The tribes must be informed of and abide by any rules adopted pursuant to 87-2-730(3)(c) through (3)(i), except that fair chase hunting by tribal members may include hunting conducted on horseback.

(3) Each of the following tribal governments in Montana may designate two tribal members to receive department-issued special licenses for use in accordance with this section:

(a) Assiniboine and Sioux tribes of the Fort Peck reservation;

(b) Blackfeet tribe;

(c) Chippewa Cree Indians of the Rocky Boy's reservation;

(d) Confederated Salish and Kootenai tribes;

(e) Fort Belknap Indian community of the Fort Belknap reservation;
(f) Northern Cheyenne tribe; and
(g) Little Shell Chippewa tribe.

(4) As used in this section, "traditional purposes" means the harvesting of buffalo by Plains Indians through utilitarian and spiritual practices handed down from generation to generation to obtain food, shelter, and clothing and to conduct ceremonies and celebrations.

History: En. Sec. 1, Ch. 196, L. 2017.

87-2-733 and 87-2-734 reserved.

87-2-735. *(Temporary)* **Landowner preference licenses and permits for deer and antelope.** (1) Subject to the provisions of subsection (2) and the limitation in subsection (3), a person who owns 160 acres or more of real property that is primarily used for agricultural purposes in a hunting district in which a limited number of deer or antelope licenses or permits are awarded must be issued, on application, a license or permit to hunt deer or antelope in the hunting district under the terms and conditions of the license or permit.

(2) When the real property is held jointly or in common by several persons, only one of the joint or common owners is entitled to the preference provided in this section, or the owners may designate their preference to a person who is an immediate family member or who is employed by the owner or owners as a land manager or in a similar capacity. Preference may not be awarded to a landowner if the hunting area is totally within the prescribed boundaries of public land.

(3) Fifteen percent of limited licenses or permits available each year in a hunting district for deer or antelope must be available to landowners under this section. If the number of persons applying pursuant to this section exceeds 15% of licenses and permits available for that hunting district, the department shall award the licenses and permits by drawing. The department shall provide a method of selecting first, second, and third choice hunting districts if a drawing is required.

87-2-735. *(Effective March 1, 2026)* **Landowner preference licenses and permits for deer and antelope.** (1) Subject to the provisions of subsection (2) and the limitation in subsection (3), a person who owns 160 acres or more of real property that is primarily used for agricultural purposes in a hunting district in which a limited number of deer or antelope licenses or permits are awarded must be issued, on application, a license or permit to hunt deer or antelope in the hunting district under the terms and conditions of the license or permit.

(2) When the real property is held jointly or in common by several persons, only one of the joint or common owners is entitled to the preference provided in this section, or the owners may designate their preference to a person who is an immediate family member, a person who is employed by the owner or owners as a land manager or in a similar capacity, or to a person with a developmental disability or a physical disability as determined by the department. Preference may not be awarded to a landowner if the hunting area is totally within the prescribed boundaries of public land.

(3) Fifteen percent of limited licenses or permits available each year in a hunting district for deer or antelope must be available to landowners under this section. If the number of persons applying pursuant to this section exceeds 15% of licenses and permits available for that hunting district, the department shall award the licenses and permits by drawing. The department shall provide a method of selecting first, second, and third choice hunting districts if a drawing is required.

History: En. Sec. 1, Ch. 94, L. 2023; amd. Sec. 6, Ch. 359, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 359, L. 2025. Amendment effective March 1, 2026.

Part 8
Exceptions to License Requirements

87-2-801. Licenses for residents at least 62 years of age or at least 75 years of age. (1) A resident, as defined in 87-2-102, who is 62 years of age or older may purchase the following for one-half the cost:

(a) a conservation license;
(b) a Class A fishing license;
(c) a Class A-1 upland game bird license;
(d) a Class A-3 deer A tag;
(e) a Class A-5 elk tag;
(f) a Class AAA combination sports license that does not include a Class A-6 black bear tag.

(2) A resident, as defined in 87-2-102, who is 75 years of age or older may use a general elk license to harvest an antlerless elk:
(a) during any season in a hunting district in which a youth under 15 years of age may harvest an antlerless elk; and
(b) on privately owned land.

History: **En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(16)(a); amd. Sec. 1, Ch. 532, L. 1981; amd. Sec. 1, Ch. 169, L. 1983; amd. Sec. 1, Ch. 35, L. 1999; amd. Sec. 17, Ch. 585, L. 2005; amd. Sec. 2, Ch. 452, L. 2007; amd. Sec. 29, Ch. 449, L. 2015; amd. Sec. 15, Ch. 221, L. 2019; amd. Sec. 19, Ch. 507, L. 2023; amd. Sec. 1, Ch. 259, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 259, L. 2025. Amendment effective October 1, 2025.

Cross-References

State parks — fees and charges, 23-1-105.
Primitive parks user fee — payment by resident not required, 23-1-118.

87-2-802. Veterans in VA hospitals and residents of state institutions and long-term care facilities, nursing care facilities, assisted living facilities, and community homes for persons with disabilities. (1) A veteran who is a patient residing at a hospital operated by the department of veterans affairs, within or outside the state, and residents of all institutions under the jurisdiction of the department of public health and human services may fish without a license. The residents shall carry a permit on a form prescribed by the department and signed by the superintendent of the institution in lieu of a license.

(2) Upon annual application by managers or directors of licensed long-term care facilities and assisted living facilities as defined in 50-5-101, community homes for persons with developmental disabilities licensed under 53-20-305, and community homes for persons with severe disabilities licensed under 52-4-203, the department shall allow supervised residents to fish without the otherwise required license during any activities approved by the facilities and homes.

History: **En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(16)(b); amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 561, Ch. 546, L. 1995; amd. Sec. 1, Ch. 77, L. 1997; amd. Sec. 29, Ch. 189, L. 1997; amd. Sec. 23, Ch. 491, L. 1999; amd. Sec. 11, Ch. 54, L. 2003.**

Cross-References

Servicemen, servicewomen, and veterans, Art. II, sec. 35, Mont. Const.

87-2-803. Licenses for persons with disabilities — definitions. (1) Persons with disabilities who are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule may purchase the following for one-half the cost:
(a) a Class A fishing license;
(b) a Class A-1 upland game bird license;
(c) a Class A-3 deer A tag;
(d) a Class A-5 elk tag.

(2) A person who has purchased a conservation license and a resident fishing license, game bird license, deer tag, or elk tag for a particular license year and who is subsequently certified as disabled is entitled to a refund for one-half of the cost of the fishing license, game bird license, deer tag, or elk tag previously purchased for that license year.

(3) A person who is certified as disabled pursuant to subsection (4) and who was issued a permit to hunt from a vehicle for license year 2014 or a subsequent license year is automatically entitled to a permit to hunt from a vehicle for subsequent license years if the criteria for obtaining a permit do not change.

(4) A person may be certified as disabled by the department and issued a permit to hunt from a vehicle, on a form prescribed by the department, if the person meets the requirements of subsection (9).

(5) (a) A person with a disability carrying a permit to hunt from a vehicle, referred to in this subsection (5) as a permitholder, may hunt by shooting a firearm from:

(i) the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-101, except a state or federal highway;

(ii) within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted; or

(iii) an off-highway vehicle or snowmobile, as defined in 61-1-101, in any area where hunting is permitted and that is open to motorized use, unless otherwise prohibited by law, as long as the off-highway vehicle or snowmobile is marked as described in subsection (5)(d) of this section.

(b) This subsection (5) does not allow a permitholder to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner.

(c) A permitholder must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the permitholder by hunting a game animal that has been wounded by the permitholder when the permitholder is unable to pursue and kill the wounded game animal.

(d) Any vehicle from which a permitholder is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle, or as prescribed by the department.

(6) (a) A resident of Montana who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind on payment of a one-time fee of $10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by department rule. A conservation license and an aquatic invasive species prevention pass are not prerequisites to licensure under this subsection (6)(a).

(b) A person who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued regular resident deer and elk licenses, in the manner provided in subsection (1) of this section, and must be accompanied by a companion, as provided in subsection (5)(c) of this section.

(7) The department shall adopt rules to establish the qualifications that a person must meet to be a companion and may adopt rules to establish when a companion can be a designated shooter for a disabled person.

(8) As used in this section, "disabled person", "person with a disability", or "disabled" means or refers to a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person's functional ability.

(9) (a) A person qualifies for a permit to hunt from a vehicle if the person is certified by a licensed physician, a licensed chiropractor, a licensed physician assistant, or an advanced practice registered nurse to be nonambulatory, to have substantially impaired mobility, or to have a documented genetic condition that limits the person's ability to walk or carry significant weight for long distances.

(b) For the purposes of this subsection (9), the following definitions apply:

(i) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, as specified by the board of nursing pursuant to 37-8-202, in addition to completing basic nursing education.

(ii) "Chiropractor" means a person who has a valid license to practice chiropractic in this state pursuant to Title 37, chapter 12, part 3.

(iii) "Documented genetic condition" means a diagnosis derived from genetic testing and confirmed by a licensed physician.

(iv) "Nonambulatory" means permanently, physically reliant on a wheelchair or a similar compensatory appliance or device for mobility.

(v) "Physician" means a person who holds a degree as a doctor of medicine or doctor of osteopathy and who has a valid license to practice medicine or osteopathic medicine in this state.

(vi) "Physician assistant" has the meaning provided in 37-20-401.

(vii) "Substantially impaired mobility" means virtual inability to move on foot due to permanent physical reliance on crutches, canes, prosthetic appliances, or similar compensatory appliances or devices.

(10) Certification under subsection (9) must be on a form provided by the department.

(11) The department or a person who disagrees with a determination of disability or eligibility for a permit to hunt from a vehicle may request a review by the board of medical examiners pursuant to 37-3-203.

History: **En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(16)(c); amd. Sec. 2, Ch. 169, L. 1983; amd. Sec. 2, Ch. 416, L. 1985; amd. Sec. 2, Ch. 41, L. 1989; amd. Sec. 2, Ch. 49, L. 1993; amd. Sec. 24, Ch. 417, L. 1995; amd. Sec. 306, Ch. 42, L. 1997; amd. Sec. 78, Ch. 472, L. 1997; amd. Sec. 1, Ch. 382, L. 1999; amd. Sec. 1, Ch. 248, L. 2001; amd. Sec. 238, Ch. 542, L. 2005; amd. Sec. 3, Ch. 556, L. 2005; amd. Sec. 3, Ch. 573, L. 2005; amd. Sec. 18, Ch. 585, L. 2005; amd. Sec. 1, Ch. 102, L. 2007; amd. Sec. 1, Ch. 136, L. 2007; amd. Sec. 2, Ch. 137, L. 2007; amd. Sec. 2, Ch. 406, L. 2007; amd. Sec. 1, Ch. 193, L. 2009; amd. Sec. 1, Ch. 352, L. 2009; amd. Sec. 1, Ch. 70, L. 2013; amd. Sec. 1, Ch. 397, L. 2013; amd. Sec. 30, Ch. 449, L. 2015; amd. Sec. 16, Ch. 221, L. 2019; amd. Sec. 2, Ch. 318, L. 2023; amd. Sec. 20, Ch. 507, L. 2023.**

Cross-References

Shooting from or across highway, 61-8-369.

87-2-804. Repealed. Sec. 120, Ch. 258, L. 2011.

History: **En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-202.1(16)(d).**

87-2-805. Licenses for persons under 18 years of age. (1) Resident and nonresident minors under 12 years of age may fish without a license.

(2) Resident minors who are 12 years of age or older and under 18 years of age may purchase the following for one-half the cost:

(a) a conservation license;
(b) a Class A fishing license;
(c) a Class A-1 upland game bird license;
(d) a migratory game bird license;
(e) a Class A-3 deer A tag;
(f) a Class A-5 elk tag;
(g) a Class AAA combination sports license that does not include a Class A-6 black bear tag. This subsection (2)(g) does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase a Class AAA license under this subsection (2)(g). A resident minor who lawfully purchases a Class AAA license pursuant to this subsection (2)(g) at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year.

(3) A nonresident minor who is 12 years of age or older and under 18 years of age may purchase an upland game bird license and a migratory game bird license for one-half of the

nonresident fee. Of the fee paid for the upland game bird license, $17 must be deposited pursuant to 87-1-270 and $7 must be deposited pursuant to 87-1-246.

(4) (a) The department may issue a free resident or nonresident big game combination license, as applicable, or a free resident or nonresident elk, deer, or antelope license and conservation license, as applicable, to a resident or nonresident youth under 18 years of age who has been diagnosed with a life-threatening illness. In order for a youth to qualify for the free license, the department must receive documentation that the youth has been diagnosed with a life-threatening illness from a licensed physician. The free special permit license may be issued to a youth on a one-time basis for only one hunting season. As used in this subsection, "life-threatening illness" means any progressive, degenerative, or malignant disease or condition that results in a significant threat, likelihood, or certainty that the child's life expectancy will not extend past the child's 19th birthday unless the course of the disease is interrupted or abated.

(b) In exercising hunting privileges, the youth must be accompanied by an adult in possession of a valid Montana hunting license or of a licensed Montana outfitter and conduct all hunting within the terms and conditions of the license issued.

(c) The department may waive hunter safety and education and bowhunter education requirements in 87-2-105 for a qualified youth under this subsection (4) and, in appropriate circumstances, may also allow the qualified youth to hunt from a vehicle in the manner described in 87-2-803.

(d) The department may limit the number of special permit licenses issued pursuant to this subsection (4) to a total of 25 annually.

(5) (a) The department shall issue a free either-sex special permit license for elk, deer, or antelope and a conservation license, as applicable, to a resident or nonresident youth under 18 years of age who has been diagnosed with a life-threatening illness and is recommended by a Montana charitable or nonprofit organization. As used in this subsection (5), "life-threatening illness" means any progressive, degenerative, or malignant disease or condition that results in a significant threat to the child's life.

(b) To qualify for the free license, the department must receive documentation from a licensed physician that the youth has been diagnosed with a life-threatening illness.

(c) The free license may be issued to a youth on a one-time basis for only one hunting season.

(d) In exercising hunting privileges, the youth shall conduct all hunting within the terms and conditions of the license issued and in the company of an adult in possession of a valid Montana hunting license or in the company of a licensed Montana outfitter representing the charitable or nonprofit organization that recommended the youth. The nonprofit organization may facilitate licensing and provide a host to help the youth prior to and during the hunt.

(e) The department may issue up to five elk, five deer, and five antelope special permit licenses pursuant to this subsection (5) annually, but not more than one tag per species per hunting district annually. These special permit licenses do not count against any quota set by the department. Licenses issued pursuant to this subsection (5) do not count against the number of antelope licenses reserved for people with permanent disabilities as provided in 87-2-706 or against the licenses reserved for youth with a life-threatening illness as provided in subsection (4).

(f) The department may waive hunter safety and education and bowhunter education requirements provided in 87-2-105 for a qualified youth under this subsection (5) and, in appropriate circumstances, shall also allow the qualified youth to hunt from a vehicle in the manner described in 87-2-803.

(g) The department shall adopt rules necessary to implement this subsection (5).

(6) Prior to reaching 12 years of age, a minor who will reach 12 years of age by January 16 of a license year may hunt any game species after August 15 of that license year as long as the minor obtains the necessary license pursuant to this chapter.

History: (1)En. Sec. 11, Ch. 238, L. 1921; re-en. Sec. 3691, R.C.M. 1921; amd. Sec. 11, Ch. 59, L. 1927; amd. Sec. 3, Ch. 161, L. 1931; re-en. Sec. 3691, R.C.M. 1935; amd. Sec. 2, Ch. 148, L. 1963; amd. Sec. 1, Ch. 48, L. 1965; amd. Sec. 1, Ch. 26, L. 1967; amd. Sec. 1, Ch. 309, L. 1971; amd. Sec. 1, Ch. 369, L. 1975; amd. Sec. 6, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-215, R.C.M. 1947; (2)En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd.

Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969; amd. Sec. 1, Ch. 129, L. 1971; amd. Sec. 1, Ch. 110, L. 1973; amd. Sec. 1, Ch. 139, L. 1973; amd. Sec. 2, Ch. 167, L. 1973; amd. Sec. 1, Ch. 261, L. 1973; amd. Sec. 1, Ch. 408, L. 1973; amd. Sec. 1, Ch. 49, L. 1975; amd. Sec. 1, Ch. 91, L. 1975; amd. Sec. 1, Ch. 289, L. 1975; amd. Sec. 1, Ch. 417, L. 1975; amd. Sec. 1, Ch. 546, L. 1975; amd. Sec. 1, Ch. 169, L. 1977; amd. Sec. 2, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-202.1, R.C.M. 1947; R.C.M. 1947, 26-202.1(16)(e), 26-215(3); amd. Sec. 18, Ch. 478, L. 1979; amd. Sec. 3, Ch. 169, L. 1983; amd. Sec. 7, Ch. 239, L. 1983; amd. Sec. 5, Ch. 304, L. 1985; amd. Sec. 2, Ch. 568, L. 1999; amd. Sec. 1, Ch. 49, L. 2001; amd. Sec. 1, Ch. 50, L. 2003; amd. Sec. 5, Ch. 228, L. 2003; amd. Sec. 2, Ch. 80, L. 2005; amd. Sec. 19, Ch. 585, L. 2005; amd. Sec. 3, Ch. 452, L. 2007; amd. Sec. 1, Ch. 131, L. 2009; amd. Sec. 1, Ch. 189, L. 2009; amd. Sec. 2, Ch. 304, L. 2009; amd. Sec. 31, Ch. 449, L. 2015; amd. Sec. 17, Ch. 221, L. 2019; amd. Sec. 21, Ch. 507, L. 2023; amd. Sec. 2, Ch. 729, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 729, L. 2025. Amendment effective October 1, 2025.

87-2-806. Taking fish or game for scientific purposes. (1) An accredited representative of an accredited school, college, university, or other institution of learning or of any governmental agency or an individual who is investigating a scientific subject for which collection is necessary, may take, kill, capture, and possess for that purpose any birds, fish, or animals protected by Montana law or department or commission rule if a permit to collect is authorized by the department. Under the provisions of this section, a permittee may take, kill, and capture protected or unprotected birds, fish, or animals in any way that is approved by the department, except by the use of explosives. A permittee may not take, kill, or capture more birds, fish, or animals than are necessary for the investigation. A collection permit may not be given for a species for which a taking is prohibited by statute or rule.

(2) A person who desires to engage in the scientific investigation shall apply to the department for a permit. The department may require the applicant to submit a plan of operations that includes the purpose for the collection, collection methodology to be employed, and the qualifications of the person who will be doing the collecting. The department may set qualifications for persons to whom permits are issued and may place special authorizations or special requirements and limitations on any permit. If the department is satisfied of the good faith and qualifications of the applicant and that the collecting is necessary for a valid purpose, the department:

(a) may issue a permit that must place a time limit on the collections and may place a restriction on the number of birds, fish, or animals to be taken; and

(b) shall require a report of the numbers and species of animals taken by collection areas.

(3) The department may deny a permit if:

(a) the applicant is not qualified to make the scientific investigation;

(b) the proposed collecting is not necessary for the proposed scientific investigation;

(c) the method of collecting is not appropriate;

(d) the proposed collecting may threaten the viability of the species; or

(e) there is no valid reason or need for the proposed scientific investigation.

(4) By December 31 of each year, a permittee shall submit a report to the department that lists the species and numbers of individuals of the species taken and locations from which collections were taken. A permittee who fails to file a required report may not be issued another permit.

(5) The permittee shall pay $50 for the permit, except that a permittee who is a representative of an accredited school, college, university, or other institution of learning or of any governmental agency is exempt from payment of the fee.

(6) The permittee may not take, have, or capture any other or greater number of birds, fish, or animals than are allowed in the permit.

(7) A representative of an accredited school, college, university, or other institution of learning or an individual permittee who may have various students or associates assisting throughout the year may apply to have a permit issued that includes the individual and the students or associates. The department shall approve the qualifications of a student or an associate and the level of supervision required by the primary permittee. The students or associates, when carrying a copy of the permit, have the same authorizations and restrictions as the primary applicant. The primary applicant shall keep a record of all students or associates listed on the permit and of the dates when each student or associate conducts a collection under the permit. The primary applicant is responsible for the students' or associates' use of the permit or copies of the permit.

History: En. Sec. 81, Ch. 173, L. 1917; re-en. Sec. 3760, R.C.M. 1921; re-en. Sec. 3760, R.C.M. 1935; amd. Sec. 27, Ch. 224, L. 1947; amd. Sec. 1, Ch. 116, L. 1973; amd. Sec. 43, Ch. 511, L. 1973; amd. Sec. 49, Ch. 9, L. 1977; R.C.M. 1947, 26-1008; amd. Sec. 1, Ch. 154, L. 1995; amd. Sec. 3, Ch. 84, L. 2003.

Cross-References

Exception to tattoo requirements for wild animals taken and released as part of scientific program, 87-1-234.
Taking of endangered species for educational, scientific, or other purposes, 87-5-109.
Capturing animals or birds in game preserve for scientific purpose, 87-5-401.

87-2-807. Taking migratory game birds for propagation — avicultural permit. (1) The department may issue avicultural permits for taking, capturing, and possessing migratory game birds, as defined in 87-2-101, for the purpose of propagation. Before issuing an avicultural permit, the department shall determine that the applicant has been issued the appropriate federal permit or that the applicant will receive the appropriate federal permit subject to concurrence by the department.

(2) An avicultural permit issued under this section must specify:

(a) the species of migratory game birds allowed to be taken under the permit;

(b) whether eggs or hatched birds, or both, may be taken;

(c) the number of eggs or hatched birds, or both, that may be taken;

(d) areas in which collection may be made;

(e) means by which collection may be made;

(f) the time period for which the permit is valid; and

(g) any other conditions imposed by the department under rules adopted pursuant to subsection (5).

(3) Hatched migratory game birds or their eggs taken under an avicultural permit issued in accordance with this section remain the property of the state and may be disposed of only with the permission of the department. Progeny of hatched migratory game birds taken under permit as provided in this section become the private property of the holder of the permit who propagates the migratory game birds, and the owner may sell or transfer the birds as private property, subject to any applicable state or federal law or regulation.

(4) The department may charge a fee for issuing an avicultural permit, if necessary, not to exceed the cost of issuing the permit.

(5) The department shall adopt rules implementing this section.

History: En. Sec. 1, Ch. 262, L. 1985; amd. Sec. 25, Ch. 417, L. 1995; amd. Sec. 97, Ch. 258, L. 2011.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

87-2-808. Fishing license exception for angler educational events and activities. (1) A participant in any angler educational event or activity approved by the department may fish without the otherwise required fishing license while participating on the specified body of water during the event.

(2) To be eligible during the 2-year period following April 16, 1997, an angler educational event or activity must be taught under the guidance of an employee of the department or by an instructor certified by the department as competent to instruct in the laws, techniques, and ethics of angling. At the end of the 2-year period, angler educational events and activities should be conducted as provided in subsection (4).

(3) The department shall adopt rules to implement this section.

(4) The department shall develop a statewide network of volunteers to conduct the angler educational events and activities for which fishing license exceptions are provided. Within 2 years of April 16, 1997, as many angler educational events and activities as possible approved pursuant to this section should be conducted by the volunteer instructors certified as provided in subsection (2).

History: En. Sec. 1, Ch. 275, L. 1997.

87-2-809. Repealed. Secs. 40, 42(1), Ch. 449, L. 2015.

History: En. Sec. 1, Ch. 585, L. 2005.

87-2-810. Apprentice certificate. (1) A person who is 10 years of age or older and who has not completed a hunter safety and education course pursuant to 87-2-105 or a trapper education course pursuant to 87-2-127 is eligible to use an apprentice certificate that entitles the holder to obtain and use hunting licenses and permits or a Class C or Class C-2 trapping license in accordance with this title and the provisions of this section.

(2) A person may obtain an apprentice certificate for no more than 2 license years before the person shall complete a Montana hunter safety and education course pursuant to 87-2-105 to be eligible for hunting licenses or a trapper education course pursuant to 87-2-127 to be eligible for trapping licenses. Completing a Montana hunter safety and education course or a trapper education course prior to turning 12 years of age does not prevent a person who is at least 10 years of age from being eligible to obtain and use licenses pursuant to this section.

(3) A person who obtains an apprentice certificate must be in the company of a mentor when hunting and trapping and shall conduct all hunting and trapping in accordance with this section and within the terms and conditions of the license or permit issued.

(4) To qualify as a mentor who will accompany an apprentice, a person must:

(a) be at least 21 years of age;

(b) if the apprentice is under 18 years of age, be related to the apprentice by blood, adoption, or marriage, be the legal guardian of the apprentice, or be a person designated by a parent or legal guardian as being capable and qualified to assist the apprentice;

(c) if serving as a hunting mentor, have completed a hunter safety and education course pursuant to 87-2-105 and have a current hunting license;

(d) if serving as a trapping mentor, have completed a trapper education course pursuant to 87-2-127 and have a current trapping license;

(e) have agreed to accompany and supervise the apprentice and remain within sight of and direct voice contact with the apprentice at all times while in the field; and

(f) confirm that the apprentice possesses the physical and psychological capacity to safely and ethically engage in hunting and trapping activities.

(5) Subject to the conditions of this section, the department shall issue an apprentice certificate on payment of a fee of $5. This fee must be deposited in the state special revenue fund account to the credit of the department for hunter education purposes.

(6) The department shall issue an apprentice certificate that allows an apprentice to be accompanied by multiple mentors.

(7) Except as provided in subsection (8), a person who obtains an apprentice certificate may purchase any unlimited hunting license or permit by any applicable deadline for the fee established pursuant to this chapter, including

a reduced cost license for which the applicant qualifies. An apprentice who is under 12 years of age is eligible to obtain the unlimited reduced cost licenses available to a person who is 12 years of age.

(8) A person who obtains an apprentice certificate is not eligible:

(a) to obtain a Class A-2 special bow and arrow license without having:

(i) completed a bowhunter education course; and

(ii) turned 12 years of age by January 16 of the license year;

(b) to obtain a black bear license;

(c) to obtain a mountain lion license;

(d) to obtain a Class D-3 resident hound training license;

(e) to obtain a wolf license;

(f) to participate in a drawing with a limited quota;

(g) to obtain a mountain sheep license in any area where the licenses are issued in unlimited number; or

(h) to obtain an elk license if the [apprentice] is under 15 years of age.

(9) An apprentice who violates the terms of this section or a mentor who violates the terms of this section while accompanying an apprentice is subject to the loss of privileges granted by this section for up to one full license season.

History: En. Sec. 38, Ch. 449, L. 2015; amd. Sec. 2, Ch. 427, L. 2017; amd. Sec. 10, Ch. 552, L. 2021; amd. Sec. 3, Ch. 44, L. 2025.

Compiler's Comments

2025 Amendment — Code Commissioner Correction: See 2025 Session Law for amendment made by sec. 3, Ch. 44, L. 2025. Amendment effective October 1, 2025.

In (8)(h) the Code Commissioner substituted "apprentice" for "apprentice hunter" for consistency with other revisions contained in Ch. 44, L. 2025.

87-2-811. Auction or lottery of mule deer license. (1) The commission may issue one male mule deer license each year through a competitive auction or lottery. The commission shall promulgate rules for the use of the license and conduct of the auction or lottery. A wildlife conservation organization that focuses on the conservation of mule deer may be authorized to conduct the license auction or lottery, in which case the authorized organization may retain up to 10% of the proceeds of the sale to cover reasonable auction or lottery expenses.

(2) All proceeds remaining from the auction or lottery, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the substantial benefit of mule deer. The proceeds from the auction or lottery must be used in addition to any other funds that the department uses for the management of mule deer.

History: En. Sec. 1, Ch. 319, L. 2003.

87-2-812. Auction or lottery of elk license. (1) The commission may issue one male elk license each year through a competitive auction or lottery. The commission shall promulgate rules for the use of the license and conduct of the auction or lottery. A wildlife conservation organization that focuses on the conservation of elk may be authorized to conduct the license auction or lottery, in which case the authorized organization may retain up to 10% of the proceeds of the sale to cover reasonable auction or lottery expenses.

(2) All proceeds remaining from the auction or lottery, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the substantial benefit of elk. The proceeds from the auction or lottery must be used in addition to any other funds that the department uses for the management of elk.

History: En. Sec. 2, Ch. 319, L. 2003.

87-2-813. Auction or lottery of wolf license. (1) The commission may issue one wolf license each year through a competitive auction or lottery. The commission shall promulgate rules for the use of the license and conduct of the auction or lottery. A wildlife conservation organization may be authorized to conduct the license auction or lottery, in which case the authorized organization may retain up to 10% of the proceeds of the sale to cover reasonable auction or lottery expenses.

(2) All proceeds remaining from the auction or lottery, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the management of wolves.

History: En. Sec. 3, Ch. 415, L. 2007.

87-2-814. *(Effective on occurrence of contingency)* **Auction or lottery of grizzly bear license.** (1) The commission may issue one grizzly bear license each year through a competitive auction or lottery. The commission shall promulgate rules for the use of the license and conduct of the auction or lottery. A wildlife conservation organization may be authorized to conduct the license auction or lottery, in which case the authorized organization may retain up to 10% of the proceeds of the sale to cover reasonable auction or lottery expenses.

(2) All proceeds remaining from the auction or lottery, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the management of grizzly bears.

History: En. Sec. 4, Ch. 415, L. 2007.

Compiler's Comments

Contingent Effective Date: Section 8(3), Ch. 415, L. 2007, provided that this section is effective upon notification by the U.S. fish and wildlife service to the department of fish, wildlife, and parks that the grizzly bear has been formally removed from the federal threatened or endangered species list.

87-2-815. Donation of hunting licenses to disabled veterans or disabled members of the armed forces. (1) The holder of any hunting license issued by the department may surrender that license and any related permit to the department for reissuance to a disabled veteran or a disabled member of the armed forces for use on an expedition arranged by a nonprofit organization that is exempt from taxation under 26 U.S.C. 501(c)(3) and that uses hunting as part of the rehabilitation of disabled veterans and disabled members of the armed forces. The person surrendering the license:

(a) is not eligible for a refund for the cost of the surrendered license;

(b) may designate to which organization the donation is being made but may not designate to which disabled veteran or disabled member of the armed forces the license is being surrendered; and

(c) shall surrender the donated license and any related permit before the start of any season for which the license and permit are valid.

(2) In order to obtain a license and any related permit pursuant to this section, a veteran or a member of the armed forces:

(a) must be a purple heart recipient;

(b) must, as the result of wounds or injuries received in a combat zone, be medically retired, have a 70% or greater disability rating by the United States department of veterans affairs or department of defense, or have active duty status;

(c) is not required to be a resident;

(d) does not have to first obtain a conservation license;

(e) is not required to pay any fee; and

(f) may not have previously received a license and any related permit pursuant to this section in the past calendar year.

(3) A license and any related permit reissued pursuant to this section entitles the disabled veteran or disabled member of the armed forces to take the same species in the same administrative region or regions, hunting district or districts, or portions thereof, as allowed by the license and any related permit that was surrendered.

(4) Any license or permit surrendered or reissued pursuant to this section may not be sold, traded, auctioned, or offered for any monetary value and may not be used by any person other than a disabled veteran or disabled member of the armed forces who meets the requirements of subsection (2).

(5) The restrictions in 87-2-702(3) and (4) do not apply to a disabled veteran or a disabled member of the armed forces who obtains a license pursuant to this section.

(6) The department may adopt rules to implement the provisions of this section.

History: **En. Sec. 1, Ch. 54, L. 2013; amd. Sec. 1, Ch. 126, L. 2019; amd. Sec. 22, Ch. 507, L. 2023; amd. Sec. 1, Ch. 253, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 253, L. 2025. Amendment effective October 1, 2025.

87-2-816. Licenses for legion of valor members — purple heart awardees. (1) A resident, as defined in 87-2-102, or a nonresident who is a legion of valor member is entitled to fish with a conservation license issued by the department.

(2) A resident, as defined in 87-2-102, awarded a purple heart for service in the armed forces of the United States is entitled to fish and hunt game birds, not including wild turkeys, with the purchase of a conservation license pursuant to 87-2-202 and a resident aquatic invasive species prevention pass pursuant to 87-2-130.

(3) A nonresident awarded a purple heart for service in the armed forces of the United States is entitled to fish and hunt game birds, not including wild turkeys, with the purchase of a conservation license pursuant to 87-2-202 and a nonresident aquatic invasive species prevention pass pursuant to 87-2-130 during expeditions arranged for the nonresident by a nonprofit organization that uses fishing and hunting as part of the rehabilitation of disabled veterans.

(4) The department's general license account must be reimbursed by a quarterly transfer of funds from the general fund to the general license account for license costs associated with the fishing and game bird hunting privileges granted pursuant to subsections (2) and (3) during the preceding calendar quarter. Reimbursement costs must be designated as license revenue.

History: **En. Sec. 36, Ch. 449, L. 2015; amd. Sec. 15, Ch. 387, L. 2017; amd. Sec. 23, Ch. 507, L. 2023.**

87-2-817. Licenses for service members. (1) A veteran or a disabled member of the armed forces who meets the qualifications in 87-2-803(9) as a result of a combat-connected injury may apply at a fish, wildlife, and parks office for a regular Class A-3 deer A tag, a Class A-4 deer B tag, a Class B-7 deer A tag, a Class B-8 deer B tag, and a special antelope license made available under 87-2-506(3) for one-half of the license fee. Licenses issued to veterans or disabled members of the armed forces under this part do not count against the number of special antelope licenses reserved for people with permanent disabilities, as provided in 87-2-706.

(2) (a) A Montana resident who is a member of the Montana national guard or the federal reserve as provided in 10 U.S.C. 10101 or who was otherwise engaged in active duty and who participated in a contingency operation as provided in 10 U.S.C. 101(a)(13) that required the member to serve at least 2 months outside of the state, upon request and upon presentation of the documentation described in subsection (2)(c), must be issued a free resident conservation license and a Class A resident fishing license or a Class AAA resident combination sports license, which may not include a Class A-6 black bear tag, upon payment of the resident base hunting license fee in 87-2-116 and the purchase of the resident aquatic invasive species prevention pass pursuant to 87-2-130, in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election.

(b) If a Montana resident who meets the service qualifications of subsection (2)(a) is subsequently required to serve another 2 months or more outside of the state under the same service qualifications, the entitlement to free licenses provided pursuant to subsection (2)(a) resets and the member may start a new 5-year entitlement period beginning in the license year that the member returns from the subsequent military service or in the year following the member's return, based on the member's election. There is no limit on the number of times the entitlement period may be reset if the Montana resident repeatedly meets the service qualifications of subsection (2)(a).

(c) To be eligible for the free licenses provided for in subsection (2)(a) or (2)(b), an applicant shall, in addition to the written application and proof of residency required in 87-2-202(1), provide to any regional department office or to the department headquarters in Helena, by mail or in person, the member's DD form 214 verifying the member's release or discharge from active duty. The applicant is responsible for providing documentation showing that the applicant participated in a contingency operation as provided in 10 U.S.C. 101(a)(13).

(d) The department's general license account must be reimbursed by a quarterly transfer of funds from the general fund to the general license account for costs associated with the free licenses granted pursuant to this subsection (2) during the preceding calendar quarter. Reimbursement costs must be designated as license revenue.

(3) A member of the armed forces who forfeited a license or permit issued through a drawing as a result of deployment for at least 2 months outside of the state in support of a contingency operation as provided in 10 U.S.C. 101(a)(13) is guaranteed the same license or permit, without additional fee, upon application in the year of the member's return from deployment or in the first year that the license or permit is made available after the member's return.

History: **En. Sec. 37, Ch. 449, L. 2015; amd. Sec. 16, Ch. 387, L. 2017; amd. Sec. 1, Ch. 231, L. 2019; amd. Sec. 24, Ch. 507, L. 2023; amd. Sec. 1, Ch. 185, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 185, L. 2025. Amendment effective October 1, 2025.

87-2-818. Law enforcement officers and firefighters critically injured in line of duty. A law enforcement officer, as defined in 7-32-201, a firefighter, or a volunteer firefighter who was critically injured in the line of duty and is permanently unable to return to work because of the injury is entitled to fish with a conservation license issued by the department during expeditions arranged for the person by a nonprofit organization that uses fishing as part of the rehabilitation of injured or disabled persons.

History: **En. Sec. 1, Ch. 115, L. 2015; amd. Sec. 25, Ch. 507, L. 2023.**

87-2-819 and 87-2-820 reserved.

87-2-821. Auction or lottery of antelope license. (1) The commission may issue one either sex antelope license each year through a competitive auction or lottery. The commission shall promulgate rules for the use of the license and conduct of the auction or lottery. A wildlife conservation organization that focuses on the conservation of antelope may be authorized to conduct the license auction or lottery, in which case the authorized organization may retain up to 10% of the proceeds of the sale to cover reasonable auction or lottery expenses.

(2) All proceeds remaining from the auction or lottery, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the substantial benefit of antelope. The proceeds from the auction or lottery must be used in addition to any other funds that the department uses for the management of antelope.

History: **En. Sec. 1, Ch. 260, L. 2025.**

Compiler's Comments

Effective Date: This section is effective October 1, 2025.

87-2-822. Auction or lottery of swan license. (1) The commission may issue one swan license each year through a competitive auction or lottery. The commission shall promulgate rules for the use of the license and conduct of the auction or lottery. A wildlife conservation organization that focuses on the conservation of migratory game birds may be authorized to conduct the license auction or lottery, in which case the authorized organization may retain up to 10% of the proceeds of the sale to cover reasonable auction or lottery expenses.

(2) All proceeds remaining from the auction or lottery, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the substantial benefit of migratory game birds. The proceeds from the auction or lottery must be used in addition to any other funds that the department uses for the management of migratory game birds.

History: **En. Sec. 2, Ch. 260, L. 2025.**

Compiler's Comments

Effective Date: This section is effective October 1, 2025.

Part 9
License Agents

87-2-901. Appointment of license agents. The director may appoint license agents as needed to sell state hunting and fishing licenses and any permits or certificates prescribed by the department, according to rules adopted by the department.

History: **En. Sec. 1, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 25, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 7, Ch. 421, L. 1977; R.C.M. 1947, 26-220.**

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.
Small business licensing coordination, Title 30, ch. 16.
Discrimination in license issuance prohibited, 49-3-204.

87-2-902. Repealed. Sec. 1, Ch. 27, L. 2023.

History: **En. Sec. 2, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 26, Ch. 511, L. 1973; amd. Sec. 8, Ch. 421, L. 1977; R.C.M. 1947, 26-221; amd. Sec. 7, Ch. 44, L. 1979; amd. Sec. 1, Ch. 534, L. 1983; amd. Sec. 8, Ch. 187, L. 1997.**

87-2-903. Compensation, fees, and duties of agents — penalty for late submission of license money. (1) License agents, except salaried employees of the department, must receive for all services rendered a commission of 50 cents for each transaction, plus any additional amount as determined under subsection (9) and by rules adopted pursuant to subsection (10).

(2) A license agent may charge a convenience fee of up to 3% of the total amount of a transaction if a purchase is made with a credit card or a debit card. A financial institution or credit card company may not prohibit collection of the convenience fee provided for in this subsection.

(3) Each license agent shall submit to the department the money received from the sale of licenses and aquatic invasive species prevention passes and from donations received pursuant to [76-17-102,] 81-7-123, 87-1-293, and 87-1-298 less the appropriate commission and convenience fee.

(4) Each license agent shall submit to the department copies of each paper license sold.

(5) The department may charge license agents appointed after March 1, 1998, an electronic license system fee not to exceed actual costs.

(6) The department may designate classes of license agents and may establish a protocol for each class of agent. Each license agent shall keep the license account open at all reasonable hours to inspection by the department, the director, the wardens, or the legislative auditor.

(7) For purposes of this section, the term "transaction" includes the sale of any license or permit, collection of any data or fee, or issuance of any certificate prescribed by the department.

The term does not include donations collected pursuant to [76-17-102,] 81-7-123, 87-1-293, and 87-1-298 or the sale of aquatic invasive species prevention passes pursuant to 23-2-541 or 87-2-130.

(8) If a license agent fails to submit to the department all money received from the declared sale of licenses and aquatic invasive species prevention passes and from donations received pursuant to [76-17-102,] 81-7-123, 87-1-293, and 87-1-298 less the appropriate commission and convenience fee by the deadline established by the department, an interest charge equal to the rate charged under 15-1-216 may be assessed. Acceptance of late payments with interest does not preclude the department from summarily revoking the appointment of a license agent under 87-2-904.

(9) A license agent, except for an electronic service provider, must receive a commission of 50 cents for each ticket the agent processes for a hunting license lottery held pursuant to 87-1-271.

(10) The department may adopt rules necessary to implement this section. *(Bracketed language terminates June 30, 2027—sec. 10, Ch. 374, L. 2017.)*

History: **En. Sec. 3, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 1, Ch. 31, L. 1959; amd. Sec. 27, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 9, Ch. 421, L. 1977; R.C.M. 1947, 26-222; amd. Sec. 15, Ch. 554, L. 1981; amd. Sec. 2, Ch. 534, L. 1983; amd. Sec. 17, Ch. 592, L. 1991; amd. Sec. 3, Ch. 92, L. 1993; amd. Sec. 9, Ch. 187, L. 1997; amd. Sec. 55, Ch. 427, L. 1999; amd. Sec. 1, Ch. 515, L. 2005; amd. Sec. 4, Ch. 452, L. 2007; amd. Sec. 2, Ch. 298, L. 2011; amd. Sec. 4, Ch. 83, L. 2013; amd. Sec. 7, Ch. 374, L. 2017; amd. Sec. 17, Ch. 387, L. 2017; amd. Sec. 9, Ch. 356, L. 2019; amd. Sec. 3, Ch. 434, L. 2019; amd. Sec. 4, Ch. 563, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 563, L. 2025. Amendment effective July 1, 2025.

Cross-References

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

87-2-904. Nontransferability of appointments — revocation and oaths. Appointments of license agents shall be nontransferable, and each appointment shall be valid only at the single location of the business as stated on the certificate of appointment. Such appointments may be summarily revoked at any time by the director upon discontinuance of the business at the stated location or for noncompliance with the provisions of this part or other regulations. Duly appointed license agents are hereby authorized to administer oaths to applicants for hunting and fishing licenses and for other permits and certificates prescribed by the department.

History: **En. Sec. 4, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 1, Ch. 7, L. 1969; amd. Sec. 10, Ch. 421, L. 1977; R.C.M. 1947, 26-223; amd. Sec. 8, Ch. 44, L. 1979.**

Part 10
Interstate Fishing Privileges

87-2-1001. Reciprocal fishing privileges of licensees of bordering states. (1) Any person who is properly licensed to fish in a state that borders Montana and who complies with Montana fish and game laws and regulations may fish in any part of a lake, reservoir, pond, river, stream, or body of water in Montana that lies within or partly within 10 miles of the boundaries of Montana when the water is declared to be open to fishing by the department if the bordering state grants the same or similar privileges in any lakes, reservoirs, ponds, rivers, streams, or bodies of water designated in a reciprocal agreement as authorized in subsection (2) within its boundaries to holders of valid Montana fishing licenses and if the bordering state enters into a reciprocal agreement with Montana setting forth terms as provided by this part.

(2) The department is authorized to enter into reciprocal agreements with corresponding state officials of adjoining states for purposes of providing reciprocal fishing privileges upon any body or bodies of water as described in subsection (1). A reciprocal agreement may include provisions by which each state shall honor the license of the other state only when a valid reciprocal license is purchased from the honoring state, the charge for the reciprocal license being set by mutual agreement of the states.

History: **En. Sec. 1, Ch. 14, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-225; amd. Sec. 10, Ch. 187, L. 1997; amd. Sec. 1, Ch. 130, L. 2009.**

Cross-References

Exemption from motorboat numbering provisions for boats numbered in another state, 23-2-514.
Boating rules, 23-2-523, 23-2-526, 23-2-529.
Navigable waters, 85-1-112.

87-2-1002. Regulation of devices and equipment used under reciprocal privilege. The department may by regulation authorize the use of fishing devices and equipment by properly licensed anglers of both states under the provisions of 87-2-1001, unless otherwise prohibited by Montana law, in waters forming the subject of the agreements.

History: En. Sec. 2, Ch. 14, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-226; amd. Sec. 2847, Ch. 56, L. 2009.

87-2-1003. Bodies of water subject to reciprocal privileges. It is the primary purpose of this part to provide a method whereby the fishing opportunities afforded upon any part of any body of water located within or partly within 10 miles of the boundaries of this state may be mutually enjoyed by the residents of Montana and the residents of the adjoining states, subject to the terms of a reciprocal agreement as authorized in 87-2-1001.

History: En. Sec. 3, Ch. 14, L. 1965; R.C.M. 1947, 26-227; amd. Sec. 2, Ch. 130, L. 2009.

87-2-1004. Rules to implement reciprocal agreements. The department is authorized to establish rules for the purpose of implementing agreements established under 87-2-1001. It is unlawful to violate any orders or rules promulgated by the department under this part.

History: En. Sec. 4, Ch. 14, L. 1965; amd. Sec. 30, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-228.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.
Suretyship, Title 28, ch. 11, part 4.

CHAPTER 3
RESTRICTIONS AND REGULATIONS

Part 1 — General Provisions

87-3-101. Repealed.
87-3-102. Repealed.
87-3-103. Repealed.
87-3-104. Repealed.
87-3-105. Repealed.
87-3-106. Hunting and fishing prohibited in fire-danger areas.
87-3-107. Repealed.
87-3-108. Repealed.
87-3-109. Repealed.
87-3-110. Repealed.
87-3-111. Repealed.
87-3-112. Repealed.
87-3-113. Repealed.
87-3-114. Labeling of packages.
87-3-115. Violation by carriers.
87-3-116. Repealed.
87-3-117. Repealed.
87-3-118. Repealed.
87-3-119 and 87-3-120 reserved.
87-3-121. Regulation of contests.
87-3-122. Repealed.
87-3-123. Repealed.
87-3-124. Repealed.
87-3-125. Repealed.
87-3-126. Use of aircraft — authority to issue permits and adopt rules.
87-3-127. Taking of stock-killing animals.
87-3-128. Exceptions — department personnel.
87-3-129. Exception in cases of extreme hunger.
87-3-130. Repealed.
87-3-131. Regulation of grizzly bear parts.
87-3-132 and 87-3-133 reserved.
87-3-134. Repealed.
87-3-135. Repealed.
87-3-136 through 87-3-140 reserved.

87-3-141. Repealed.
87-3-142. Repealed.
87-3-143. Repealed.
87-3-144. Repealed.
87-3-145. Permit to salvage game animals.

Part 2 — Fish

87-3-201. Department control over fish hatcheries.
87-3-202. Supervision over fish hatcheries by director.
87-3-203. Restrictions on use of fish as bait.
87-3-204. Designation of state waters for particular fishing methods.
87-3-205. Repealed.
87-3-206. Repealed.
87-3-207. Repealed.
87-3-208. Regulation of placing of caged fish.
87-3-209. Repealed.
87-3-210. Permit required for importation of nonsalmonid fish or eggs.
87-3-211 through 87-3-220 reserved.
87-3-221. Importation of salmonid fish or eggs unlawful — exception — certification — permit.
87-3-222. When certification unnecessary.
87-3-223. Authorization for rules and personnel.
87-3-224. Enforcement.
87-3-225. Inspection, quarantine, and disinfection of fish hatcheries and culture facilities.
87-3-226. Duty to report fish pathogens.
87-3-227. Civil liability.
87-3-228 through 87-3-234 reserved.
87-3-235. Fort Peck multispecies fish hatchery established.
87-3-236. Repealed.
87-3-237. Warm water fishery enhancement account — source of funding — use of account.

Part 3 — Game Animals

87-3-301. Repealed.
87-3-302. Repealed.
87-3-303. Policy toward nonresident big game hunters.
87-3-304. Repealed.
87-3-305. Repealed.
87-3-306. Repealed.
87-3-307. Repealed.
87-3-308. Development of maps identifying land ownership boundaries.
87-3-309 reserved.
87-3-310. Transfer of possession of harvested game.
87-3-311 through 87-3-314 reserved.
87-3-315. Recovery and possession of horns and skulls from mountain sheep that died of natural causes.

Part 4 — Game Birds

87-3-401. Repealed.
87-3-402. Repealed.
87-3-403. Migratory game birds — closed season and bag limits.
87-3-404. Repealed.
87-3-405. Repealed.

Part 5 — Fur-Bearing Animals (Repealed)

Part 6 — Bird Hunting Dogs

87-3-601. Definitions.
87-3-602. Training bird hunting dogs — Class D-5 license.
87-3-603. Field trials — requirements — reporting taking of untagged game birds.
87-3-604. Rulemaking authority.

Part 1
General Provisions

87-3-101. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec.

1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 3, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; R.C.M. 1947, 26-301((1)(a) part); amd. Sec. 2, Ch. 214, L. 1985; amd. Sec. 3, Ch. 416, L. 1985; amd. Sec. 152, Ch. 370, L. 1987; amd. Sec. 26, Ch. 417, L. 1995; amd. Sec. 239, Ch. 542, L. 2005; amd. Sec. 2, Ch. 229, L. 2009.

87-3-102. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 15, Ch. 238, L. 1921; re-en. Sec. 3696, R.C.M. 1921; amd. Sec. 7, Ch. 77, L. 1923; amd. Sec. 16, Ch. 192, L. 1925; amd. Sec. 13, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1931; re-en. Sec. 3696, R.C.M. 1935; amd. Sec. 1, Ch. 160, L. 1941; amd. Sec. 1, Ch. 158, L. 1955; amd. Sec. 1, Ch. 40, L. 1961; amd. Sec. 3, Ch. 134, L. 1969; amd. Sec. 1, Ch. 162, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-307(1); amd. Sec. 5, Ch. 277, L. 1991; amd. Sec. 4, Ch. 263, L. 1995; amd. Sec. 1, Ch. 275, L. 2001; amd. Sec. 6, Ch. 415, L. 2007.

87-3-103. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 15, Ch. 238, L. 1921; re-en. Sec. 3696, R.C.M. 1921; amd. Sec. 7, Ch. 77, L. 1923; amd. Sec. 16, Ch. 192, L. 1925; amd. Sec. 13, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1931; amd. Sec. 1, Ch. 160, L. 1941; amd. Sec. 1, Ch. 158, L. 1955; amd. Sec. 1, Ch. 40, L. 1961; amd. Sec. 3, Ch. 134, L. 1969; amd. Sec. 1, Ch. 162, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-307(2); amd. Sec. 6, Ch. 277, L. 1991.

87-3-104. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 15, Ch. 238, L. 1921; re-en. Sec. 3696, R.C.M. 1921; amd. Sec. 7, Ch. 77, L. 1923; amd. Sec. 16, Ch. 192, L. 1925; amd. Sec. 13, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1931; amd. Sec. 1, Ch. 160, L. 1941; amd. Sec. 1, Ch. 158, L. 1955; amd. Sec. 1, Ch. 40, L. 1961; amd. Sec. 3, Ch. 134, L. 1969; amd. Sec. 1, Ch. 162, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-307(3); amd. Sec. 7, Ch. 277, L. 1991; amd. Sec. 27, Ch. 417, L. 1995.

87-3-105. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 3694.3, R.C.M. 1935 by Sec. 1, Ch. 100, L. 1949; amd. Sec. 1, Ch. 153, L. 1951; amd. Sec. 2, Ch. 113, L. 1975; amd. Sec. 37, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-344(2); amd. Sec. 1, Ch. 624, L. 1985.

87-3-106. Hunting and fishing prohibited in fire-danger areas. (1) When the fire danger becomes so extreme that the governor, upon the advice and recommendation of the department of natural resources and conservation, closes an area to trespass because of fire danger, that area is automatically closed to hunting or fishing and remains closed while the fire closure remains in effect.

(2) A board of county commissioners may initiate a request for a closure by submitting the request to the department. However, the department may adopt reasonable rules specifying the fire prevention and suppression measures that must have been taken by the board before a request may be submitted and considered.

History: En. Sec. 1, Ch. 57, L. 1969; amd. Sec. 31, Ch. 511, L. 1973; amd. Sec. 1, Ch. 178, L. 1975; R.C.M. 1947, 26-345; amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 488, Ch. 418, L. 1995.

Cross-References

Fixing of seasons, 87-1-304.

87-3-107. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 1, Ch. 23, L. 1933; re-en. Sec. 3725.1, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1974; amd. Sec. 1, Ch. 149, L. 1977; R.C.M. 1947, 26-504; amd. Sec. 28, Ch. 417, L. 1995.

87-3-108. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 5, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; R.C.M. 1947, 26-301(1)(b).

87-3-109. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 1, Ch. 309, L. 1991; amd. Sec. 29, Ch. 417, L. 1995.

87-3-110. Repealed. Sec. 3, Ch. 113, L. 2011.

History: En. Sec. 5, Ch. 540, L. 1985.

87-3-111. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 63, Ch. 173, L. 1917; amd. Sec. 1, Ch. 142, L. 1919; re-en. Sec. 3742, R.C.M. 1921; amd. Sec. 23, Ch. 77, L. 1923; amd. Sec. 28, Ch. 59, L. 1927; re-en. Sec. 3742, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1939; amd. Sec. 2, Ch. 22, L. 1941; amd. Sec. 24, Ch. 224, L. 1947; amd. Sec. 1, Ch. 146, L. 1955; R.C.M. 1947, 26-806;

amd. Sec. 1, Ch. 92, L. 1981; amd. Sec. 2, Ch. 540, L. 1985; amd. Sec. 2, Ch. 409, L. 1989; amd. Sec. 8, Ch. 277, L. 1991; amd. Sec. 3, Ch. 329, L. 1991; amd. Sec. 1, Ch. 153, L. 1993; amd. Sec. 1, Ch. 116, L. 1995; amd. Sec. 1, Ch. 262, L. 1995; amd. Sec. 2, Ch. 499, L. 2003; amd. Sec. 2, Ch. 59, L. 2005.

87-3-112. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 43, Ch. 173, L. 1917; re-en. Sec. 3725, R.C.M. 1921; amd. Sec. 26, Ch. 192, L. 1925; amd. Sec. 21, Ch. 59, L. 1927; amd. Sec. 1, Ch. 41, L. 1931; re-en. Sec. 3725, R.C.M. 1935; amd. Sec. 18, Ch. 224, L. 1947; amd. Sec. 40, Ch. 9, L. 1977; R.C.M. 1947, 26-503; amd. Sec. 3, Ch. 59, L. 2005.

87-3-113. Repealed. Sec. 7, Ch. 59, L. 2005.

History: En. Sec. 51, Ch. 173, L. 1917; re-en. Sec. 3730, R.C.M. 1921; amd. Sec. 19, Ch. 77, L. 1923; amd. Sec. 22, Ch. 59, L. 1927; re-en. Sec. 3730, R.C.M. 1935; amd. Sec. 19, Ch. 224, L. 1947; amd. Sec. 1, Ch. 38, L. 1963; amd. Sec. 42, Ch. 9, L. 1977; R.C.M. 1947, 26-701.

87-3-114. Labeling of packages. All shippers of fish, game or nongame birds, game animals, fur-bearing animals, the skins of fur-bearing animals or predatory animals, or parts thereof are required to label all packages offered for shipment by parcel post, common carrier, or otherwise. The label shall be securely attached to the address of the package and shall plainly indicate the names and addresses of the consignor and consignee and the complete contents of the package.

History: En. Sec. 54, Ch. 173, L. 1917; re-en. Sec. 3733, R.C.M. 1921; amd. Sec. 22, Ch. 77, L. 1923; amd. Sec. 28, Ch. 192, L. 1925; amd. Sec. 25, Ch. 59, L. 1927; re-en. Sec. 3733, R.C.M. 1935; amd. Sec. 20, Ch. 224, L. 1947; amd. Sec. 43, Ch. 9, L. 1977; R.C.M. 1947, 26-704.

87-3-115. Violation by carriers. A person or the agent or employee of any common carrier, association, stage, express, railway, or transportation company may not transport or receive for transportation or carriage or sell or offer for sale any of the fish, game or nongame birds, game animals, fur-bearing animals, the skins of fur-bearing animals, or parts thereof, except as specifically provided for by 87-3-114 and 87-3-310. All fish, game or nongame birds, game animals, fur-bearing animals, or parts thereof had in possession or that have been shipped or are being transported in violation of any of the provisions of 87-3-114, 87-3-310, or this section must be seized, confiscated, and disposed of as provided by law.

History: En. Sec. 55, Ch. 173, L. 1917; re-en. Sec. 3734, R.C.M. 1921; amd. Sec. 26, Ch. 59, L. 1927; re-en. Sec. 3734, R.C.M. 1935; amd. Sec. 21, Ch. 224, L. 1947; amd. Sec. 44, Ch. 9, L. 1977; R.C.M. 1947, 26-705; amd. Sec. 4, Ch. 59, L. 2005; amd. Sec. 4, Ch. 238, L. 2019.

87-3-116. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 1, Ch. 445, L. 2007.

87-3-117. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 1, Ch. 329, L. 1991; amd. Sec. 5, Ch. 59, L. 2005.

87-3-118. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 2, Ch. 329, L. 1991; amd. Sec. 30, Ch. 417, L. 1995; amd. Sec. 9, Ch. 502, L. 1999; amd. Sec. 6, Ch. 59, L. 2005.

87-3-119 and 87-3-120 reserved.

87-3-121. Regulation of contests. The commission shall adopt rules to regulate contests, in accordance with the provisions of 87-6-214, by a person, firm, or club that intends to offer or give a prize, gift, or anything of value in connection with or as a prize for the taking, capturing, killing, or in any manner acquiring fish that are protected under Title 87. The commission's rules must be based on the commission's duty under Title 87 to protect, preserve, and propagate fish in the state.

History: En. Sec. 1, Ch. 82, L. 1935; re-en. Sec. 3744.1, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1974; R.C.M. 1947, 26-809; amd. Sec. 1, Ch. 346, L. 1987; amd. Sec. 99, Ch. 258, L. 2011.

Cross-References

Fixing of bag and possession limits, 87-1-304.

87-3-122. Repealed. Sec. 1, Ch. 206, L. 1991.

History: En. Sec. 11, Ch. 238, L. 1921; re-en. Sec. 3691, R.C.M. 1921; amd. Sec. 11, Ch. 59, L. 1927; amd. Sec. 3, Ch. 161, L. 1931; re-en. Sec. 3691, R.C.M. 1935; amd. Sec. 2, Ch. 148, L. 1963; amd. Sec. 1, Ch. 48, L. 1965; amd. Sec. 1, Ch. 26, L. 1967; amd. Sec. 1, Ch. 309, L. 1971; amd. Sec. 1, Ch. 369, L. 1975; amd. Sec. 6, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-215(1), (2), (4).

87-3-123. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 5, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; R.C.M. 1947, 26-301(3); amd. Sec. 2848, Ch. 56, L. 2009.

87-3-124. Repealed. Sec. 120, Ch. 258, L. 2011.

History: (1)En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 3, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; Sec. 26-301, R.C.M. 1947; (2)En. Sec. 1, Ch. 184, L. 1971; amd. Sec. 4, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-303.5, R.C.M. 1947; R.C.M. 1947, 26-301(part (5)(a)), (5)(b), 26-303.5; amd. Sec. 1, Ch. 43, L. 1997; amd. Sec. 2, Ch. 275, L. 2001; amd. Sec. 1, Ch. 126, L. 2003.

87-3-125. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 3, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; R.C.M. 1947, 26-301(8), (9); amd. Sec. 2, Ch. 102, L. 2007.

87-3-126. Use of aircraft — authority to issue permits and adopt rules. (1) A manned or unmanned aircraft may be used for the purpose of herding, driving, or hazing wild animals damaging private property or crops on the property in question pursuant to a permit issued by the department.

(2) The commission shall adopt rules for the issuance of the permit. The permit may be conditioned to address individual circumstances of each application for a permit.

(3) The department shall issue permits except during any legal general or regular hunting season for the species for which a permit was requested.

(4) The permitting program must comply with requirements of federal law for the activity.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 5, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; R.C.M. 1947, 26-301(2); amd. Sec. 1, Ch. 211, L. 2005; amd. Sec. 100, Ch. 258, L. 2011; amd. Sec. 1, Ch. 553, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 553, L. 2025. Amendment effective October 1, 2025.

Cross-References

Department of Livestock predatory animal control program, Title 81, ch. 7, part 1.

87-3-127. Taking of stock-killing animals. (1) Livestock owners, their agents, or employees of the department or a federal agency may use dogs in pursuit of stock-killing black bears, stock-killing mountain lions, and stock-killing bobcats. Other means of taking stock-killing black bears, stock-killing mountain lions, and stock-killing bobcats may be used, except the deadfall.

(2) Traps used in capturing bears must be inspected twice each day with the inspections 12 hours apart.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223,

L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 3, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; R.C.M. 1947, 26-301(part (5)(a)); amd. Sec. 5, Ch. 316, L. 2001.

87-3-128. Exceptions — department personnel. The provisions of this chapter relating to methods of herding, driving, capturing, taking, locating, or concentrating of fish, game animals, game birds, or fur-bearing animals do not apply to the department or to any employee thereof while acting within the scope and course of the powers and duties of the department.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; R.C.M. 1947, 26-301(10); amd. Sec. 9, Ch. 44, L. 1979.

87-3-129. Exception in cases of extreme hunger. When it is shown that any violation of the provisions of this title was for the purpose of preventing great suffering by hunger of any person which could not otherwise have been avoided, the provisions of this title shall not apply to the case.

History: En. Sec. 79, Ch. 173, L. 1917; re-en. Sec. 3758, R.C.M. 1921; re-en. Sec. 3758, R.C.M. 1935; amd. Sec. 25, Ch. 9, L. 1977; R.C.M. 1947, 26-1006.

87-3-130. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 1, Ch. 306, L. 1981; amd. Sec. 13, Ch. 206, L. 1995; amd. Sec. 3, Ch. 540, L. 1995; amd. Sec. 3, Ch. 275, L. 2001; amd. Sec. 6, Ch. 316, L. 2001; amd. Sec. 1, Ch. 294, L. 2009.

87-3-131. Regulation of grizzly bear parts. A person who is responsible for the death of a grizzly bear shall deliver all parts of the grizzly bear required by department or commission regulation for scientific purposes to an officer or employee of the department for inspection as soon as possible after removal, and the department shall return to the person any bone structure and skull within 1 year upon written request. The hide must be returned immediately.

History: En. Sec. 98(4), Ch. 258, L. 2011.

87-3-132 and 87-3-133 reserved.

87-3-134. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 1, Ch. 366, L. 1999.

87-3-135. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 2, Ch. 22, L. 1991.

87-3-136 through 87-3-140 reserved.

87-3-141. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 1, Ch. 492, L. 1987; amd. Sec. 1, Ch. 453, L. 1997.

87-3-142. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 2, Ch. 492, L. 1987; amd. Sec. 2, Ch. 453, L. 1997.

87-3-143. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 3, Ch. 492, L. 1987; amd. Sec. 4, Ch. 589, L. 1993.

87-3-144. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 4, Ch. 492, L. 1987.

87-3-145. Permit to salvage game animals. (1) A peace officer may issue permits to applicants for the purpose of salvaging antelope, deer, elk, or moose that have been accidentally killed as a result of a vehicle collision.

(2) For purposes of this section, "peace officer" means a sheriff, deputy sheriff, undersheriff, police officer, highway patrol officer, fish and game warden, park ranger, campus security officer, or airport police officer.

History: En. Sec. 1, Ch. 137, L. 2013.

Part 2
Fish

87-3-201. Department control over fish hatcheries. The department has full control of all state fish hatcheries and is responsible for their construction, maintenance, and operation. All that construction work done under contract or otherwise shall be done under control and supervision of the director. The department shall administer the taking and collecting of all spawn, the hatching of all spawn and eggs, and the rearing, propagation, and distribution of fry, fingerlings, and fish. The department may purchase as many eyed eggs as are necessary to keep the hatcheries of the state supplied with eggs and in full operation. The department shall make every reasonable effort to collect sufficient eggs from the public streams or lakes of this state to supply the hatcheries and for that purpose may build, equip, and use fish traps and nets at any time of the year in all public waters. The department may purchase the eyed eggs of fish not propagated in this state for the purpose of stocking the waters of this state.

History: En. Sec. 17, Ch. 193, L. 1921; re-en. Sec. 3666, R.C.M. 1921; amd. Sec. 10, Ch. 192, L. 1925; re-en. Sec. 3666, R.C.M. 1935; amd. Sec. 4, Ch. 81, L. 1951; amd. Sec. 15, Ch. 511, L. 1973; R.C.M. 1947, 26-117.

Cross-References

Acquisition, importation, and propagation of fish, 87-1-221.
Nurseries, fish ladders, and rearing ponds, 87-1-222.

87-3-202. Supervision over fish hatcheries by director. The director has general supervision over all fish hatcheries in the state. The output of all hatcheries shall be used to stock the lakes and streams of the state and shall be for free and impartial distribution. Distribution shall be under the direction of the department subject to an official order of the director. The director may exchange spawn or fish with other states or persons for distribution in this state.

History: En. Sec. 15, Ch. 193, L. 1921; re-en. Sec. 3664, R.C.M. 1921; amd. Sec. 8, Ch. 192, L. 1925; re-en. Sec. 3664, R.C.M. 1935; amd. Sec. 2, Ch. 81, L. 1951; amd. Sec. 15, Ch. 177, L. 1965; amd. Sec. 14, Ch. 511, L. 1973; R.C.M. 1947, 26-115.

Cross-References

Nurseries, fish ladders, and rearing ponds, 87-1-222.

87-3-203. Restrictions on use of fish as bait. The department may prohibit the use of small fish as bait for catching fish in such waters as the department designates. It may promulgate such other rules as are necessary to insure an adequate supply of fish in such waters and may regulate fishing from boats or other floating devices and the use of fishing lures or baits in all waters of the state.

History: En. Sec. 3694.3, R.C.M. 1935 by Sec. 1, Ch. 100, L. 1949; amd. Sec. 1, Ch. 153, L. 1951; amd. Sec. 2, Ch. 113, L. 1975; amd. Sec. 37, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-344(1).

Cross-References

Boating regulations, 23-2-504, 87-1-303.
Operation of boats near persons fishing, 23-2-525.

87-3-204. Designation of state waters for particular fishing methods. (1) (a) The commission may designate waters within the state in which rubber or spring-propelled spears employed by persons swimming or submerged in the water or traps, seines, nets, spears, or gigs may be used for taking:

(i) nongame fish; or

(ii) walleyed pike, sauger, northern pike, burbot (ling), and whitefish.

(b) The commission may adopt rules for the taking of fish under this subsection (1), and the rules may be specific to the water designated. The designated waters may be closed at the discretion of the commission.

(c) Except when the taking of game fish is authorized pursuant to subsection (1)(a)(ii), all game fish captured while fishing as authorized under this subsection (1) must be returned uninjured to the waters from which they were taken.

(2) The commission may designate certain waters where setlines may be used to fish for certain species of game or nongame fish, and the commission may designate the number of hooks and lines and the length of line or lines that may be used as setlines.

(3) The commission may designate waters where authorized commercial fishing operators may use approved nets, seines, and traps to fish for designated species of nongame fish.

History: Ap. p. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 3, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; Sec. 26-301, R.C.M. 1947; Ap. p. Sec. 22, Ch. 173, L. 1917; re-en. Sec. 3714, R.C.M. 1921; amd. Sec. 16, Ch. 77, L. 1923; amd. Sec. 25, Ch. 192, L. 1925; amd. Sec. 18, Ch. 59, L. 1927; re-en. Sec. 3714, R.C.M. 1935; amd. Sec. 1, Ch. 44, L. 1959; amd. Sec. 2, Ch. 90, L. 1969; amd. Sec. 1, Ch. 8, L. 1971; amd. Sec. 36, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-332, R.C.M. 1947; R.C.M. 1947, 26-301(part (1)(a)), (6), (7), 26-332; amd. Sec. 1, Ch. 50, L. 1979; amd. Sec. 1, Ch. 267, L. 1983; amd. Sec. 1, Ch. 149, L. 1987; amd. Sec. 1, Ch. 211, L. 1989; amd. Sec. 2, Ch. 28, L. 1991; amd. Sec. 4, Ch. 84, L. 2003; amd. Sec. 1, Ch. 227, L. 2003; amd. Sec. 101, Ch. 258, L. 2011.

Cross-References

Seasonal rules adopted annually, 2-4-102.

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

87-3-205. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 25, Ch. 173, L. 1917; re-en. Sec. 3716, R.C.M. 1921; amd. Sec. 1, Ch. 113, L. 1933; re-en. Sec. 3716, R.C.M. 1935; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-334; amd. Sec. 5, Ch. 84, L. 2003.

87-3-206. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 26, Ch. 173, L. 1917; re-en. Sec. 3717, R.C.M. 1921; amd. Sec. 24, Ch. 192, L. 1925; amd. Sec. 1, Ch. 82, L. 1933; re-en. Sec. 3717, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1949; amd. Sec. 1, Ch. 114, L. 1955; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-335; amd. Sec. 2849, Ch. 56, L. 2009.

87-3-207. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 1, Ch. 126, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-813.

87-3-208. Regulation of placing of caged fish. The department shall have the authority to regulate the placing of caged fish in public waters to protect the recreational and aesthetic use of such water from pollution, excessive private use, and the introduction of disease.

History: En. Sec. 2, Ch. 126, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-814.

87-3-209. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 2, Ch. 376, L. 1989.

87-3-210. Permit required for importation of nonsalmonid fish or eggs. Except when intended for use in home or office aquariums, importations of live nonsalmonid fish or eggs must be accompanied by a permit as described for salmonids in 87-3-221(2). The permit may require that the importation be inspected and approved by a department biologist prior to release or placement.

History: En. Sec. 4, Ch. 376, L. 1989.

Cross-References

Importation permits and health certificates for animals, Title 81, ch. 2, part 7.

87-3-211 through 87-3-220 reserved.

87-3-221. Importation of salmonid fish or eggs unlawful — exception — certification — permit. (1) It is unlawful to bring live or dead salmonid fish or eggs into the state of Montana for any purpose unless the importations are shipped direct from the source to destination and a written certification that the source is free of all fish pathogens specified by the department as posing a threat to existing fisheries accompanies the shipment. Certification must be made by a fish pathologist approved by the director. Certification of the source may be by inspection conducted annually or at other times that the director may order.

(2) In addition to the certification required in subsection (1), all importations of live salmonid fish or eggs must be accompanied by a permit issued by the department. The department shall issue an import permit upon application to the department showing that the proposed importations do not present a substantial threat to the health of state fisheries. The department may condition the permit as necessary to protect fisheries from the introduction and spread of pathogens. Import permits apply to all importations from specified and certified species and sources by a permittee until January 31 of the year succeeding the year of issuance, when the permit expires. However, a separate permit is required for importations by a permittee for species or from sources unspecified in the permittee's other permit or permits.

History: **En. Sec. 1, Ch. 10, L. 1969; amd. Sec. 1, Ch. 37, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1701; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 376, L. 1989; amd. Sec. 2850, Ch. 56, L. 2009; amd. Sec. 102, Ch. 258, L. 2011.**

Cross-References

Importation permits and health certificates for animals, Title 81, ch. 2, part 7.

87-3-222. When certification unnecessary. (1) Nothing in 87-3-221 through 87-3-224 or 87-6-219(1)(b) may restrict the importation and transportation of dead salmonid fish or eggs when the fish or eggs have been processed or prepared in a manner that kills those fish pathogens specified by the department as posing a threat to fisheries.

(2) Dead salmonid fish or eggs transported into Montana for processing or caught wild are exempt from the requirement for certification. However, it is unlawful to discard, place, or allow uncertified salmonid fish, parts, or eggs that have been transported into Montana to enter into surface waters other than sewage or disposal systems.

History: **En. Sec. 2, Ch. 10, L. 1969; amd. Sec. 2, Ch. 37, L. 1974; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1702; amd. Sec. 3, Ch. 376, L. 1989; amd. Sec. 103, Ch. 258, L. 2011.**

87-3-223. Authorization for rules and personnel. The department may promulgate such rules and regulations and may employ such personnel for testing and inspection as are necessary to carry out the provisions of 87-3-221 through 87-3-224.

History: **En. Sec. 4, Ch. 10. L. 1969; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1704.**

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

87-3-224. Enforcement. The cargo and vehicle involved in a violation of 87-6-219(1)(b) and 87-3-210 or 87-3-221 through 87-3-223 may, at the option of the department, either be denied the right to proceed further within the state of Montana or be quarantined until inspected by a designated biologist from the department. The department shall inform the department of transportation of the provisions regarding importation of salmonid and nonsalmonid fish and eggs so that the department of transportation may enforce the provisions at ports of entry and checking stations under 60-2-303.

History: **En. Sec. 5, Ch. 10, L. 1969; amd. Sec. 3, Ch. 37, L. 1974; amd. Sec. 52, Ch. 9, L. 1977; R.C.M. 1947, 26-1705; amd. Sec. 5, Ch. 376, L. 1989; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 104, Ch. 258, L. 2011.**

87-3-225. Inspection, quarantine, and disinfection of fish hatcheries and culture facilities. (1) The department may conduct inspections for the presence of fish pathogens at any fish hatchery or culture facility. Inspections may be conducted at the request of the hatchery or facility or by order of the department. The expense of inspection must be paid by the hatchery or facility requesting the inspection or by the department when the inspection is ordered by the department.

(2) When a fish hatchery or culture facility is found to be contaminated or to contain fish or eggs infected with specified fish pathogens, the department may order appropriate action, including quarantine, destruction of infected fish or eggs, or disinfection of all or part of the hatchery or facility. An order for destruction of infected fish or eggs may not be issued unless the infection is confirmed by two laboratories. The owner of the hatchery or facility is liable for all costs and expenses associated with the cleanup and the disposition of infected fish or eggs. When destruction of eggs is ordered at a private facility and the department has surplus eggs available, the department may replace the destroyed eggs without charge to the private facility.

History: **En. Sec. 6, Ch. 376, L. 1989.**

Cross-References

Construction and maintenance of fish hatcheries and fish ladders, 87-1-222.

87-3-226. Duty to report fish pathogens. A person, including the owner or custodian of a fish hatchery or culture facility, who has reason to suspect the presence of fish pathogens specified by the department as posing a threat to existing fisheries shall immediately give notice to the department.

History: **En. Sec. 7, Ch. 376, L. 1989.**

87-3-227. Civil liability. A person, firm, or corporation that violates any provision of this part pertaining to fish disease or rules or orders of the department is liable for damages caused by the violation. The damages may be recovered by the person, firm, or corporation damaged or by the department on behalf of the public in a civil action in a court of competent jurisdiction.

All money collected by the department under this section must be deposited in the state special revenue fund as provided in 87-1-601(1).

History: **En. Sec. 8, Ch. 376, L. 1989.**

87-3-228 through 87-3-234 reserved.

87-3-235. Fort Peck multispecies fish hatchery established. (1) There is a multispecies fish hatchery near Fort Peck dam. The purpose of the hatchery is to provide healthy warm water game fish to improve the warm water fishing opportunities in Montana with minimal impact on cold water fish populations. Administration of the hatchery must be by the department, consistent with the department's authority provided for in 87-3-201.

(2) The multispecies hatchery is intended to use 96 acres of rearing ponds to produce warm water species. The hatchery is to employ land available through long-term lease from the U.S. army corps of engineers. Electric power for the hatchery may be purchased from Fort Peck dam at the lowest available rate.

(3) Propagation of warm water species, including but not limited to largemouth bass (Micropterus salmoides), smallmouth bass (Micropterus dolomieui), walleye (Sander vitreus), sauger (Sander canadensis), black crappie (Pomoxis nigromaculatus), white crappie (Pomoxis annularis), channel catfish (Ictalurus punctatus), yellow perch (Perca flavescens), northern pike (Esox lucius), pallid sturgeon (Scaphirhynchus albus), paddlefish (Polyodon spathula), tiger muskellunge, other warm water species classified as species of special concern, threatened, or endangered, and bait fish, including cisco (Coregonus artedii), must be given priority over the propagation of any cold water species at the hatchery. To the greatest extent possible, the department shall maximize the production of warm water species at the hatchery. The propagation of cold water species may not displace or reduce the propagation of warm water species at the hatchery.

(4) Costs for hatchery operation, maintenance, and personnel are to be funded with revenue in the general license account or any federal funding available to the department.

History: **En. Sec. 1, Ch. 559, L. 1999; amd. Sec. 1, Ch. 245, L. 2005; amd. Secs. 1, 2, Ch. 431, L. 2009; amd. Sec. 1, Ch. 111, L. 2017.**

87-3-236. Repealed. Secs. 3, 4(2), Ch. 431, L. 2009.

History: **En. Sec. 2, Ch. 559, L. 1999; amd. Sec. 6, Ch. 228, L. 2003; amd. Sec. 2, Ch. 245, L. 2005; amd. Sec. 1, Ch. 410, L. 2007; amd. Sec. 44, Ch. 19, L. 2011.**

87-3-237. Warm water fishery enhancement account — source of funding — use of account. (1) There is an account to the credit of the department in the state special revenue fund established by 17-2-102 to be known as the warm water fishery enhancement account.

(2) There must be deposited in the account:

(a) a one-time transfer of money from the department in the amount of $1,000 to start the fund;

(b) proceeds from voluntary contributions.

(3) Money in the account may be used only to fund the enhancement of warm water fisheries and habitats in Montana.

(4) The department shall adopt a process that allows individuals to donate money to the warm water fishery enhancement account by means of a voluntary contribution. Each individual must be provided an opportunity to contribute to the account at the time the individual purchases a fishing license.

History: **En. Sec. 1, Ch. 343, L. 2005.**

Part 3
Game Animals

87-3-301. Repealed. Sec. 120, Ch. 258, L. 2011.

History: **En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; R.C.M. 1947, 26-301(4); amd. Sec. 2, Ch. 517, L. 1987; amd. Sec. 31, Ch. 417, L. 1995.**

87-3-302. Repealed. Sec. 120, Ch. 258, L. 2011.

History: (1) thru (4)En. Sec. 1, Ch. 74, L. 1937; amd. Sec. 1, Ch. 12, L. 1961; amd. Sec. 1, Ch. 305, L. 1971; amd. Sec. 1, Ch. 20, L. 1974; amd. Sec. 10, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-302, R.C.M. 1947; (5)En. Sec. 2, Ch. 74, L. 1937; amd. Sec. 2, Ch. 20, L. 1974; Sec. 26-303, R.C.M. 1947; R.C.M. 1947, 26-302, 26-303.

87-3-303. Policy toward nonresident big game hunters. It is the policy of this state to protect and preserve game animals primarily for the citizens of this state while welcoming nonresidents licensed to hunt in Montana to enjoy the state's public wildlife resources and acknowledging nonresidents' financial contribution to Montana's wildlife management and tourism industry.

History: En. Sec. 1, Ch. 229, L. 1965; R.C.M. 1947, 26-303.1; amd. Sec. 1, Ch. 282, L. 2015.

87-3-304. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 3, Ch. 229, L. 1965; R.C.M. 1947, 26-303.3; amd. Sec. 1, Ch. 48, L. 1999.

87-3-305. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 2, Ch. 123, L. 1933; re-en. Sec. 3697.1, R.C.M. 1935; amd. Sec. 2, Ch. 465, L. 1977; R.C.M. 1947, 26-315; amd. Sec. 32, Ch. 417, L. 1995; amd. Sec. 4, Ch. 261, L. 2005.

87-3-306. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 16a, Ch. 238, L. 1921; amd. Sec. 3698, R.C.M. 1921; amd. Sec. 18, Ch. 192, L. 1925; re-en. Sec. 3698, R.C.M. 1935; amd. Sec. 7, Ch. 224, L. 1947; amd. Sec. 1, Ch. 99, L. 1949; amd. Sec. 33, Ch. 9, L. 1977; R.C.M. 1947, 26-317.

87-3-307. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 1, Ch. 133, L. 1961; amd. Sec. 47, Ch. 9, L. 1977; R.C.M. 1947, 26-811; amd. Sec. 1, Ch. 424, L. 2005.

87-3-308. Development of maps identifying land ownership boundaries. In recognition of potential problems associated with identifying property boundaries in the field when seeking permission for hunting, the department shall work cooperatively with all state and federal land management agencies, state and local organizations representing hunters, state and local landowner organizations, and other interested persons to develop accurate land ownership maps that identify land ownership boundaries in the state.

History: En. Sec. 2, Ch. 48, L. 1999.

87-3-309 reserved.

87-3-310. Transfer of possession of harvested game. (1) A person licensed to hunt and authorized to possess a carcass of a game animal that requires mandatory department biological inspection or a wolf that requires mandatory department biological inspection may, after validating the license or tag in accordance with 87-6-411, transfer possession of all or part of that game animal or wolf to any person at any time after leaving the site of the kill, provided a statement of possession has been completed.

(2) A statement of possession must be on a form prescribed by the department and signed by the licensed person and the person or persons receiving possession and must accompany the carcass or portion of carcass presented for inspection.

(3) Upon receipt of game or a part of game, the recipient is authorized and responsible to present the harvested game to the department as required for biological inspection, if applicable, and salvage the edible meat for human consumption, if required by law.

(4) A person may not transfer possession of all or part of a grizzly bear carcass.

History: En. Sec. 1, Ch. 238, L. 2019; amd. Sec. 1, Ch. 316, L. 2023.

Cross-References

Unlawful transfer of harvested game, 87-6-407.

87-3-311 through 87-3-314 reserved.

87-3-315. Recovery and possession of horns and skulls from mountain sheep that died of natural causes. (1) Except as provided in subsections (6) and (7), a person may recover and possess the horn or horns and attached skull, or portion thereof, of a mountain sheep that died of natural causes and was not purposefully or accidentally killed, captured, or taken, including due to being struck by a vehicle.

(2) Horns and skulls recovered pursuant to this section must be reported to the department by a method prescribed by the department within 48 hours and presented to the department for inspection and placement of a permanent pin in a horn within 10 days. The fee for the pin is $25.

(3) The insertion of a pin does not certify that an animal died of natural causes but identifies the horn or horns and indicates that the requirements of subsection (2) were met.

(4) The department may require a person who recovered a horn or horns and skull, or portion thereof, to return to the site of recovery to verify they were lawfully recovered.

(5) Skulls and horns recovered under this section may not be sold, bartered, or purchased and may not be transferred to another person without a permit issued by the department.

(6) This section does not allow the recovery or possession of horns and skulls found in state parks.

(7) The department may suspend the recovery of horns and skulls pursuant to this section during a disease-related die-off event within a mountain sheep population.

(8) For the purposes of this section, the term "horn" means the hollow horn sheath of a male mountain sheep, either attached to the skull or separated from the skull.

History: En. Sec. 1, Ch. 244, L. 2019.

Part 4
Game Birds

87-3-401. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R.C.M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969; amd. Sec. 1, Ch. 177, L. 1971; amd. Sec. 1, Ch. 124, L. 1973; amd. Sec. 1, Ch. 305, L. 1973; amd. Sec. 1, Ch. 108, L. 1975; amd. Sec. 1, Ch. 152, L. 1975; amd. Sec. 9, Ch. 9, L. 1977; amd. Sec. 1, Ch. 196, L. 1977; amd. Sec. 5, Ch. 235, L. 1977; amd. Sec. 1, Ch. 400, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 485, L. 1977; R.C.M. 1947, 26-301(part(1)(a)); amd. Sec. 1, Ch. 194, L. 1995.

87-3-402. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 18, Ch. 238, L. 1921; re-en. Sec. 3700, R.C.M. 1921; amd. Sec. 10, Ch. 77, L. 1923; amd. Sec. 20, Ch. 192, L. 1925; amd. Sec. 14, Ch. 59, L. 1927; re-en. Sec. 3700, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1951; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 3, Ch. 465, L. 1977; R.C.M. 1947, 26-319; amd. Sec. 33, Ch. 417, L. 1995; amd. Sec. 3, Ch. 499, L. 2003.

87-3-403. Migratory game birds — closed season and bag limits. Laws relating to migratory birds are prescribed by the regulations of the United States department of interior and the fish and wildlife service. Open season, bag limit, and other rules and regulations are announced each year by proclamation by the president of the United States. After each proclamation, the department by proper action will adopt, advertise, and enforce any proclaimed regulations as may be applicable to the state of Montana. A person who violates a provision of this section is subject to the provisions of 87-6-410.

History: En. Sec. 20, Ch. 238, L. 1921; re-en. Sec. 3703, R.C.M. 1921; amd. Sec. 13, Ch. 77, L. 1923; amd. Sec. 16, Ch. 59, L. 1927; re-en. Sec. 3703, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1941; amd. Sec. 1, Ch. 113, L. 1955; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-320; amd. Sec. 105, Ch. 258, L. 2011.

Cross-References

Importation permits and health certificates, Title 81, ch. 2, part 7.
Fixing of seasons by Commission, 87-1-304.
Mourning dove as migratory game bird — season restricted, 87-2-101.

87-3-404. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 2, Ch. 35, L. 1959; R.C.M. 1947, 26-511.

87-3-405. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 3, Ch. 35, L. 1959; amd. Sec. 41, Ch. 9, L. 1977; R.C.M. 1947, 26-512; amd. Sec. 2851, Ch. 56, L. 2009.

Part 5
Fur-Bearing Animals
(Repealed)

87-3-501. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 21, Ch. 238, L. 1921; re-en. Sec. 3704, R.C.M. 1921; amd. Sec. 14, Ch. 77, L. 1923; amd. Sec. 22, Ch. 192, L. 1925; amd. Sec. 17, Ch. 59, L. 1927; re-en. Sec. 3704, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1943; amd. Sec. 8, Ch. 224, L. 1947; amd. Sec. 1, Ch. 132, L. 1955; amd. Sec. 1, Ch. 69, L. 1961; R.C.M. 1947, 26-321(1st part); amd. Sec. 34, Ch. 417, L. 1995.

87-3-502. Repealed. Sec. 1, Ch. 275, L. 1983.

History: En. Sec. 21, Ch. 238, L. 1921; re-en. Sec. 3704, R.C.M. 1921; amd. Sec. 14, Ch. 77, L. 1923; amd. Sec. 22, Ch. 192, L. 1925; amd. Sec. 17, Ch. 59, L. 1927; re-en. Sec. 3704, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1943; amd. Sec. 8, Ch. 224, L. 1947; amd. Sec. 1, Ch. 132, L. 1955; amd. Sec. 1, Ch. 69, L. 1961; R.C.M. 1947, 26-321(2nd part).

87-3-503. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 21, Ch. 238, L. 1921; re-en. Sec. 3704, R.C.M. 1921; amd. Sec. 14, Ch. 77, L. 1923; amd. Sec. 22, Ch. 192, L. 1925; amd. Sec. 17, Ch. 59, L. 1927; re-en. Sec. 3704, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1943; amd. Sec. 8, Ch. 224, L. 1947; amd. Sec. 1, Ch. 132, L. 1955; amd. Sec. 1, Ch. 69, L. 1961; R.C.M. 1947, 26-321(part).

87-3-504. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 21, Ch. 238, L. 1921; re-en. Sec. 3704, R.C.M. 1921; amd. Sec. 14, Ch. 77, L. 1923; amd. Sec. 22, Ch. 192, L. 1925; amd. Sec. 17, Ch. 59, L. 1927; re-en. Sec. 3704, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1943; amd. Sec. 8, Ch. 224, L. 1947; amd. Sec. 1, Ch. 132, L. 1955; amd. Sec. 1, Ch. 69, L. 1961; R.C.M. 1947, 26-321(part); amd. Sec. 4, Ch. 275, L. 2001.

87-3-505. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 21, Ch. 238, L. 1921; re-en. Sec. 3704, R.C.M. 1921; amd. Sec. 14, Ch. 77, L. 1923; amd. Sec. 22, Ch. 192, L. 1925; amd. Sec. 17, Ch. 59, L. 1927; re-en. Sec. 3704, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1943; amd. Sec. 8, Ch. 224, L. 1947; amd. Sec. 1, Ch. 132, L. 1955; amd. Sec. 1, Ch. 69, L. 1961; R.C.M. 1947, 26-321(part).

87-3-506. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Secs. 1, 2, 3, Ch. 629, L. 1979; amd. Sec. 2852, Ch. 56, L. 2009; amd. Sec. 3, Ch. 229, L. 2009.

87-3-507. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 1, Ch. 495, L. 1983; amd. Sec. 2853, Ch. 56, L. 2009.

Part 6
Bird Hunting Dogs

87-3-601. Definitions. As used in this part, the following definitions apply:

(1) "Bird hunting dog" means a dog trained or being trained to point, flush, or retrieve game birds.

(2) "Field trial" means an organized event affiliated with a national organization to examine, evaluate, or test the ability of bird hunting dogs to point, flush, or retrieve game birds.

(3) "Game bird" means a bird defined as an upland game bird or migratory game bird in 87-2-101.

History: En. Sec. 1, Ch. 103, L. 2019.

87-3-602. Training bird hunting dogs — Class D-5 license. (1) (a) Training of bird hunting dogs using game birds not raised in captivity is allowed with the purchase of a Class D-5 license and pursuant to the requirements of this part.

(b) A Class D-5 license is required for training bird dogs using game birds not raised in captivity. A person who is at least 18 years of age or older or who will turn 18 years of age during the season for which the license is issued may purchase a license for a fee of $5 for residents and $10 for nonresidents. The department may issue a free resident or nonresident Class D-5 license to a youth who is 12 to 18 years of age.

(c) An applicant for a Class D-5 license shall report on the application the number of dogs to be trained. The number of dogs must be printed on the license issued by the department.

(2) A Class D-5 license is not required for a person training bird hunting dogs with a method that kills game birds raised in captivity. A person shall tag or mark the captive game

bird prior to release. Captive game birds must be obtained from a game bird farm licensed under 87-4-903 or from a source of game birds approved by the department.

(3) A person who takes an untagged or unmarked game bird while training a bird hunting dog outside of the established season for that species or who is not licensed to take that species shall immediately report the taking to a representative of the department.

History: En. Sec. 2, Ch. 103, L. 2019; amd. Sec. 1, Ch. 668, L. 2023; amd. Sec. 1, Ch. 291, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 291, L. 2025. Amendment effective October 1, 2025.

87-3-603. Field trials — requirements — reporting taking of untagged game birds. (1) A person or organization shall apply for a permit from the department using a form provided by the department prior to conducting a field trial on public land.

(2) A signed application must be submitted to the department at least 20 days prior to the date of the field trial.

(3) The application must state the name and address of the national affiliate, the location of the field trial, the date or dates of the field trial, whether live game birds are to be used, and any other information required by the department to determine the advisability of granting permission for the field trial.

(4) The department may deny an application that it determines is not in the best interests of the protection, preservation, propagation, and conservation of game birds.

(5) The department may condition a permit for a field trial as necessary for the protection, preservation, propagation, and conservation of game birds.

(6) Within 10 days of receiving the application, the department shall notify the applicant if the permit is granted, granted with conditions, or denied.

(7) Game birds used in a field trial must be tagged or marked before being planted or released. Game birds must be obtained from a game bird farm licensed under 87-4-903 or from a source of game birds approved by the department.

(8) A person who takes an untagged game bird during a field trial outside of the established season for that species or who is not licensed to take that species shall immediately report the taking to a representative of the department.

History: En. Sec. 3, Ch. 103, L. 2019.

87-3-604. Rulemaking authority. The commission may adopt rules to implement the provisions of this part, including but not limited to limiting the number of Class D-5 licenses issued to nonresidents and limiting the number of dogs that may be trained under a Class D-5 license.

History: En. Sec. 4, Ch. 103, L. 2019; amd. Sec. 2, Ch. 668, L. 2023; amd. Sec. 2, Ch. 291, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 291, L. 2025. Amendment effective October 1, 2025.

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87-4-910. Transportation of birds.
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87-4-912. Records and reporting.
87-4-913. Rulemaking.
87-4-914. Release of birds.
87-4-915. Repealed.
87-4-916. Revocation of license.

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87-4-1001. Definitions.
87-4-1002. Fur farm license required — applicability.
87-4-1003. Application for license.
87-4-1004. License and renewal fee — deposit.
87-4-1005. Term of license — conditions — changes in operation.
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87-4-1012. Rulemaking.
87-4-1013. Revocation of license.
87-4-1014. Repealed.

Part 11 — General Provisions

87-4-1101. Transfer of ownership interest in commercial licenses.

Chapter Cross-References

Small business licensing coordination center, Title 30, ch. 16, part 2.
Licensing and regulation of outfitters and guides, Title 37, ch. 47.

Part 1
Outfitters and Guides
(Renumbered and Repealed)

87-4-101. Renumbered 37-47-101. Sec. 11, Ch. 528, L. 1987.

87-4-102. Renumbered 37-47-102. Sec. 11, Ch. 528, L. 1987.

87-4-103. Renumbered 37-47-404. Sec. 11, Ch. 528, L. 1987.

87-4-104. Renumbered 37-47-201. Sec. 11, Ch. 528, L. 1987.

87-4-105. Repealed. Sec. 12, Ch. 528, L. 1987.

History: En. Sec. 5, Ch. 221, L. 1971; amd. Sec. 39, Ch. 511, L. 1973; amd. Sec. 18, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-912; amd. Sec. 6, Ch. 545, L. 1981.

87-4-106. Repealed. Sec. 12, Ch. 528, L. 1987.

History: En. Sec. 6, Ch. 221, L. 1971; amd. Sec. 19, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-913; amd. Sec. 7, Ch. 545, L. 1981.

87-4-107 through 87-4-120 reserved.

87-4-121. Renumbered 37-47-301. Sec. 11, Ch. 528, L. 1987.

87-4-122. Renumbered 37-47-302. Sec. 11, Ch. 528, L. 1987.

87-4-123. Renumbered 37-47-303. Sec. 11, Ch. 528, L. 1987.

87-4-124. Renumbered 37-47-304. Sec. 11, Ch. 528, L. 1987.

87-4-125. Renumbered 37-47-305. Sec. 11, Ch. 528, L. 1987.

87-4-126. Repealed. Sec. 11, Ch. 239, L. 1983.

History: **En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(6), (7); amd. Sec. 13, Ch. 545, L. 1981.**

87-4-127. Renumbered 37-47-306. Sec. 11, Ch. 528, L. 1987.

87-4-128. Renumbered 37-47-307. Sec. 11, Ch. 528, L. 1987.

87-4-129. Renumbered 37-47-308. Sec. 11, Ch. 528, L. 1987.

87-4-130. Renumbered 37-47-309. Sec. 11, Ch. 528, L. 1987.

87-4-131. Renumbered 37-47-310. Sec. 11, Ch. 528, L. 1987.

87-4-132. Renumbered 37-47-311. Sec. 11, Ch. 528, L. 1987.

87-4-133. Renumbered 37-47-312. Sec. 11, Ch. 528, L. 1987.

87-4-134 through 87-4-140 reserved.

87-4-141. Renumbered 37-47-341. Sec. 11, Ch. 528, L. 1987.

87-4-142. Renumbered 37-47-342. Sec. 11, Ch. 528, L. 1987.

87-4-143. Renumbered 37-47-343. Sec. 11, Ch. 528, L. 1987.

87-4-144. Repealed. Sec. 12, Ch. 528, L. 1987.

History: **En. Sec. 14, Ch. 221, L. 1971; amd. Sec. 40, Ch. 511, L. 1973; amd. Sec. 24, Ch. 9, L. 1977; R.C.M. 1947, 26-921; amd. Sec. 21, Ch. 545, L. 1981.**

87-4-145 through 87-4-160 reserved.

87-4-161. Renumbered 37-47-401. Sec. 11, Ch. 528, L. 1987.

87-4-162. Renumbered 37-47-402. Sec. 11, Ch. 528, L. 1987.

87-4-163. Renumbered 37-47-403. Sec. 11, Ch. 528, L. 1987.

Part 2
Taxidermists

87-4-201. *(Temporary)* **Regulation of taxidermists.** (1) As used in this section, "taxidermist" means a person who conducts a business for the purpose of mounting, preserving, or preparing all or part of the dead bodies of any wildlife.

(2) Before conducting the business of a taxidermist, a taxidermist shall obtain from the department a taxidermist's license and pay an annual license fee of $50.

(3) A taxidermist shall keep a written record of all the articles of wildlife in the taxidermist's possession or control, including the following information:

(a) the kind and number of each article of wildlife;

(b) the name and residence of the owner of the article of wildlife; and

(c) all the articles of wildlife shipped and to whom and where shipped.

(4) The taxidermist shall keep the written record required under subsection (3) for as long as the articles of wildlife remain in the possession of the taxidermist or at least 5 years, whichever is longer. These records must be open to inspection by a warden at any reasonable time.

(5) A person who violates this section is subject to the penalties provided in 87-6-703.

87-4-201. *(Effective March 1, 2026)* **Regulation of taxidermists.** (1) As used in this section, "taxidermist" means a person who conducts a business for the purpose of mounting, preserving, or preparing all or part of the dead bodies of any wildlife.

(2) Before conducting the business of a taxidermist, a taxidermist shall obtain from the department a taxidermist's license and pay an annual license fee of $50. The license expires on February 28 of the year following issuance.

(3) A taxidermist shall keep a written record of all the articles of wildlife in the taxidermist's possession or control, including the following information:

(a) the kind and number of each article of wildlife;

(b) the name and residence of the owner of the article of wildlife; and

(c) all the articles of wildlife shipped and to whom and where shipped.

(4) The taxidermist shall keep the written record required under subsection (3) for as long as the articles of wildlife remain in the possession of the taxidermist or at least 5 years, whichever is longer. These records must be open to inspection by a warden or the director at any reasonable time.

(5) A person who violates this section is subject to the penalties provided in 87-6-703.

History: En. Sec. 72, Ch. 173, L. 1917; re-en. Sec. 3751, R.C.M. 1921; amd. Sec. 24, Ch. 77, L. 1923; re-en. Sec. 3751, R.C.M. 1935; amd. Sec. 26, Ch. 224, L. 1947; amd. Sec. 1, Ch. 12, L. 1959; amd. Sec. 1, Ch. 10, L. 1974; amd. Sec. 48, Ch. 9, L. 1977; amd. Sec. 1, Ch. 129, L. 1977; R.C.M. 1947, 26-907; amd. Sec. 1, Ch. 129, L. 2003; amd. Sec. 106, Ch. 258, L. 2011; amd. Sec. 1, Ch. 50, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 50, L. 2025. Amendment effective March 1, 2026.

Cross-References

Effect of failure to comply with licensing requirements, 7-21-2113.

Part 3
Fur Dealers

Part Cross-References

Rabies control — restrictions on possession of certain wild animals, Title 50, ch. 23, part 1.

Fur farms, Title 87, ch. 4, part 10.

87-4-301. Fur dealers defined. (1) A person or persons, firm, company, or corporation engaging in, carrying on, or conducting wholly or in part the business of buying or selling, trading, or dealing within the state of Montana in the skins or pelts of any animal or animals designated by the laws of Montana as fur-bearing or predatory animals is considered a fur dealer within the meaning of this part.

(2) If the fur dealer resides in or if the fur dealer's principal place of business is within the state of Montana, the fur dealer is considered a resident fur dealer. All other fur dealers are considered nonresident fur dealers.

History: En. Sec. 1, Ch. 42, L. 1929; re-en. Sec. 3778.3, R.C.M. 1935; R.C.M. 1947, 26-1301; amd. Sec. 2854, Ch. 56, L. 2009.

87-4-302. *(Temporary)* **Records and inspection.** (1) A fur dealer shall keep a book in which shall be recorded separately on the date of each transaction the following facts:

(a) the number and kind of all skins or pelts purchased or sold by the fur dealer;

(b) the place where the skins or furs were killed or trapped and a separate record of all the skins or pelts as were killed or trapped outside this state;

(c) the trapping license number under which the furs or pelts were taken in cases where a trapper's license is required;

(d) the names and addresses of the persons to whom the skins or pelts were sold or from whom they were purchased.

(2) This book shall be open at all reasonable times to the inspection of the director or any warden or any United States game warden and shall be preserved and accessible for 1 year after the expiration of any license granted to the fur dealer.

87-4-302. *(Effective March 1, 2026)* **Records and inspection.** (1) A fur dealer shall keep a written record that contains for each transaction a separate, dated entry providing the following details:

(a) the number and kind of all skins or pelts purchased or sold by the fur dealer;

(b) the place where the skins or furs were killed or trapped and a separate record of all the skins or pelts that were killed or trapped outside the state;

(c) the trapping license number under which the furs or pelts were taken in cases where a trapping license is required; and

(d) the names and addresses of the persons to whom the skins or pelts were sold or from whom they were purchased.

(2) A fur dealer shall retain the written record required under subsection (1) for as long as the skins, pelts, or furs remain in the possession of the fur dealer or for at least 1 year, whichever period is longer. This record must be open to inspection by a warden or the director at any reasonable time.

History: En. Sec. 2, Ch. 42, L. 1929; re-en. Sec. 3778.4, R.C.M. 1935; amd. Sec. 47, Ch. 511, L. 1973; R.C.M. 1947, 26-1302; amd. Sec. 2, Ch. 50, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 50, L. 2025. Amendment effective March 1, 2026.

87-4-303. Persons required to have fur dealer's license. A fur dealer shall, before buying, selling, or in any manner dealing in the skins or pelts of any fur-bearing or predatory animal within this state, secure a fur dealer's license from the director. A license is not required for a hunter or trapper selling skins or pelts that the hunter or trapper has lawfully taken or for a person who is not a fur dealer who purchases skins or pelts exclusively for the person's own use and not for sale.

History: En. Sec. 3, Ch. 42, L. 1929; re-en. Sec. 3778.5, R.C.M. 1935; amd. Sec. 48, Ch. 511, L. 1973; R.C.M. 1947, 26-1303; amd. Sec. 2855, Ch. 56, L. 2009.

87-4-304. License classification and fees. (1) The following classes of licenses may be issued and the following fees charged for the licenses:

(a) resident fur dealer's license, $10;

(b) nonresident fur dealer's license:

(i) the same as the fee charged in the nonresident's state of residence for a Montana fur dealer seeking licensure in that state; or

(ii) if the nonresident's state does not issue a nonresident fur dealer's license, $50;

(c) fur dealer's agent's license, $10.

(2) A person who is employed by a resident or nonresident fur dealer as a traveling fur buyer is considered a fur dealer's agent. A fur dealer's agent's license may be issued to any person who is employed as a fur buyer by a licensed resident or licensed nonresident fur dealer, providing that it is the responsibility of each fur dealer and fur dealer's agent to have the proper license before buying or dealing in furs as defined in 87-4-301.

History: En. Sec. 4, Ch. 42, L. 1929; re-en. Sec. 3778.6, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1941; amd. Sec. 1, Ch. 188, L. 1945; R.C.M. 1947, 26-1304; amd. Sec. 1, Ch. 48, L. 1989; amd. Sec. 60, Ch. 16, L. 1991.

87-4-305. Issuance and expiration of licenses. The license required by this part shall be issued annually and shall expire on April 30 of each year, and no reduction in the fee charged for said license shall be made in any case where said license runs for less than 1 year.

History: En. Sec. 5, Ch. 42, L. 1929; re-en. Sec. 3778.7, R.C.M. 1935; R.C.M. 1947, 26-1305.

87-4-306. Violations. A person, firm, company, or corporation may not violate any of the provisions of this part. A person convicted of a violation is subject to the penalties provided in 87-6-704.

History: En. Sec. 6, Ch. 42, L. 1929; re-en. Sec. 3778.8, R.C.M. 1935; amd. Sec. 33, Ch. 224, L. 1947; amd. Sec. 51, Ch. 9, L. 1977; R.C.M. 1947, 26-1306; amd. Sec. 107, Ch. 258, L. 2011.

Part 4
Alternative Livestock Ranches

Part Cross-References

Minimum wage for alternative livestock ranch employees, 39-3-402, 39-3-404, 39-3-406.
Unemployment insurance coverage — agricultural labor, 39-51-205.
Tattoo records, 87-1-232.
Fee limitation for multiple licenses, 87-1-606.

87-4-401. Repealed. Sec. 51, Ch. 570, L. 1983.

History: En. Sec. 84, Ch. 173, L. 1917; amd. Sec. 1, Ch. 200, L. 1919; re-en. Sec. 3777, R.C.M. 1921; amd. Sec. 31, Ch. 192, L. 1925; amd. Sec. 1, Ch. 73, L. 1933; re-en. Sec. 3777, R.C.M. 1935; amd. Sec. 1, Ch. 120, L. 1947; amd. Sec. 1, Ch. 43, L. 1967; amd. Sec. 1, Ch. 78, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1201(part).

87-4-402. Repealed. Sec. 51, Ch. 570, L. 1983.

History: En. Sec. 84, Ch. 173, L. 1917; amd. Sec. 1, Ch. 200, L. 1919; re-en. Sec. 3777, R.C.M. 1921; amd. Sec. 31, Ch. 192, L. 1925; amd. Sec. 1, Ch. 73, L. 1933; re-en. Sec. 3777, R.C.M. 1935; amd. Sec. 1, Ch. 120, L. 1947; amd. Sec. 1, Ch. 43, L. 1967; amd. Sec. 1, Ch. 78, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1201(part).

87-4-403. Repealed. Sec. 51, Ch. 570, L. 1983.

History: En. Sec. 84, Ch. 173, L. 1917; amd. Sec. 1, Ch. 200, L. 1919; re-en. Sec. 3777, R.C.M. 1921; amd. Sec. 31, Ch. 192, L. 1925; amd. Sec. 1, Ch. 73, L. 1933; re-en. Sec. 3777, R.C.M. 1935; amd. Sec. 1, Ch. 120, L. 1947; amd. Sec. 1, Ch. 43, L. 1967; amd. Sec. 1, Ch. 78, L. 1971; R.C.M. 1947, 26-1201(part); amd. Sec. 2, Ch. 218, L. 1979.

87-4-404. Repealed. Sec. 51, Ch. 570, L. 1983.

History: En. Sec. 84, Ch. 173, L. 1917; amd. Sec. 1, Ch. 200, L. 1919; re-en. Sec. 3777, R.C.M. 1921; amd. Sec. 31, Ch. 192, L. 1925; amd. Sec. 1, Ch. 73, L. 1933; re-en. Sec. 3777, R.C.M. 1935; amd. Sec. 1, Ch. 120, L. 1947; amd. Sec. 1, Ch. 43, L. 1967; amd. Sec. 1, Ch. 78, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1201(part).

87-4-405. Repealed. Sec. 51, Ch. 570, L. 1983.

History: En. Sec. 84, Ch. 173, L. 1917; amd. Sec. 1, Ch. 200, L. 1919; re-en. Sec. 3777, R.C.M. 1921; amd. Sec. 31, Ch. 192, L. 1925; amd. Sec. 1, Ch. 73, L. 1933; re-en. Sec. 3777, R.C.M. 1935; amd. Sec. 1, Ch. 120, L. 1947; amd. Sec. 1, Ch. 43, L. 1967; amd. Sec. 1, Ch. 78, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1201(part).

87-4-406. Definitions. As used in this part, the following definitions apply:

(1) "Alternative livestock" means a privately owned caribou, white-tailed deer, mule deer, elk, moose, antelope, mountain sheep, or mountain goat indigenous to the state of Montana, a privately owned reindeer, or any other cloven-hoofed ungulate as classified by the department. Black bear and mountain lion must be regulated pursuant to Title 87, chapter 4, part 8.

(2) "Alternative livestock ranch" means the enclosed land area upon which alternative livestock may be kept for purposes of obtaining, rearing in captivity, keeping, or selling alternative livestock or parts of alternative livestock, as authorized under this part.

(3) "Cloven-hoofed ungulate" means an animal of the order Artiodactyla, except a member of the families suidae, camelidae, or hippopotamidae. The term does not include domestic pigs, domestic cows, domestic yaks, domestic sheep, domestic goats that are not naturally occurring in the wild in their country of origin, or bison.

(4) "Department" means the department of fish, wildlife, and parks.

(5) "Facilities" means perimeter fences and other enclosures that provide for the confinement, handling, and quarantine of alternative livestock.

(6) "Game animals" means game animals, as defined in 87-2-101, that are not the lawful property of any private person.

(7) "Person" means an individual, firm, corporation, association, or partnership.

History: En. Sec. 1, Ch. 570, L. 1983; amd. Sec. 3, Ch. 540, L. 1985; amd. Sec. 1, Ch. 315, L. 1993; amd. Sec. 2, Ch. 503, L. 1995; amd. Sec. 1, Ch. 322, L. 1999; amd. Sec. 7, Ch. 574, L. 1999.

87-4-407. License required — moratorium — penalty — seizure of illegally possessed animals. (1) A person may not operate an alternative livestock ranch in this state without having first obtained an alternative livestock ranch license from the department prior to November 7, 2000. A person may not apply for or be granted a license after that date.

(2) A person who operates an alternative livestock ranch without a license or possesses, transports, buys, or sells animals whose importation into the state is restricted pursuant to 87-4-424 is subject to the penalties provided in 87-6-705.

(3) Any animal held in violation of subsection (2) or otherwise illegally possessed may be immediately seized by the department and is subject to disposal by the department. Costs of seizure may be charged to the person in possession of the animal.

History: En. Sec. 2, Ch. 570, L. 1983; amd. Sec. 2, Ch. 315, L. 1993; amd. Sec. 8, Ch. 574, L. 1999; amd. Sec. 1, Ch. 1, Sp. L. May 2000; amd. Sec. 1, I.M. No. 143, approved Nov. 7, 2000; amd. Sec. 108, Ch. 258, L. 2011.

87-4-408. Jurisdiction. (1) The department has primary jurisdiction over alternative livestock ranches with regard to licensing, reports, recordkeeping, exterior fencing, classification of certain species under 87-4-424, unlawful capture under 87-4-418, inspection under 87-4-413, and enforcement of the functions listed in this subsection.

(2) The department of livestock has primary jurisdiction over alternative livestock ranches with regard to marking, inspection, transportation, importation, quarantine, hold orders, interior facilities, health, and enforcement of the functions listed in this subsection.

History: En. Sec. 3, Ch. 570, L. 1983; amd. Sec. 1, Ch. 531, L. 1991; amd. Sec. 3, Ch. 503, L. 1995; amd. Sec. 9, Ch. 574, L. 1999; amd. Sec. 2, I.M. No. 143, approved Nov. 7, 2000.

Cross-References

Livestock, Title 81.

Disease control, Title 81, ch. 2.

87-4-409. Repealed. Sec. 9, I.M. No. 143, Nov. 7, 2000.

History: En. Sec. 4, Ch. 570, L. 1983; amd. Sec. 3, Ch. 315, L. 1993; amd. Sec. 10, Ch. 574, L. 1999.

87-4-410. Repealed. Sec. 9, I.M. No. 143, Nov. 7, 2000.

History: En. Sec. 5, Ch. 570, L. 1983; amd. Sec. 4, Ch. 503, L. 1995; amd. Sec. 11, Ch. 574, L. 1999.

87-4-411. License renewal fees — deposit of fees. (1) The department shall charge an annual renewal alternative livestock ranch license fee based on the following scale:

(a) an alternative livestock ranch with 1 to 20 alternative livestock, a fee of $100;

(b) an alternative livestock ranch with 21 to 60 alternative livestock, a fee of $200; and

(c) an alternative livestock ranch with more than 60 alternative livestock, a fee of $400.

(2) The department of livestock shall assess a fee, not to exceed $50, for each alternative livestock imported into the state.

(3) (a) One-half of the fees collected pursuant to subsection (1) must be deposited in the state special revenue fund for the use of the department for purposes of this part.

(b) One-half of the fees collected pursuant to subsection (1) and all import fees collected pursuant to subsection (2) must be deposited in the state special revenue fund for the use of the department of livestock for purposes of this part.

History: En. Sec. 6, Ch. 570, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 5, Ch. 315, L. 1993; amd. Sec. 5, Ch. 503, L. 1995; amd. Sec. 12, Ch. 574, L. 1999; amd. Sec. 2, Ch. 1, Sp. L. May 2000; amd. Sec. 3, I.M. No. 143, approved Nov. 7, 2000.

Cross-References

Fee limitation for multiple licenses, 87-1-606.

87-4-412. Term of license — renewal — transfer prohibited. (1) An alternative livestock ranch license expires on March 1 of the year succeeding the year of issuance. Application for renewal must be made before a license expires. The department shall renew the license upon payment of the renewal fee if the licensee has complied with all recording and reporting requirements.

(2) An alternative livestock ranch license for a specific facility is not transferable.

History: En. Sec. 7, Ch. 570, L. 1983; amd. Sec. 6, Ch. 315, L. 1993; amd. Sec. 13, Ch. 574, L. 1999; amd. Sec. 4, I.M. No. 143, approved Nov. 7, 2000.

87-4-413. Inspection. The department may inspect the alternative livestock ranch or the licensee's alternative livestock ranch records on a scheduled basis or on another reasonable basis as may be determined necessary.

History: En. Sec. 8, Ch. 570, L. 1983; amd. Sec. 14, Ch. 574, L. 1999; amd. Sec. 5, I.M. No. 143, approved Nov. 7, 2000.

Cross-References

Entry on private land — policy, 87-1-229.

87-4-414. Alternative livestock as private property — source — marking — fee shooting prohibited. (1) All alternative livestock lawfully possessed on a licensed alternative livestock ranch are private property for which the licensee is responsible as provided by law.

(2) The licensee may acquire, breed, grow, keep, pursue, handle, harvest, use, sell, or dispose of the alternative livestock and their progeny in any quantity and at any time of year as long as the licensee complies with the requirements of this part, except that the licensee may not allow the shooting of game animals or alternative livestock, as defined in 87-2-101 or 87-4-406, or of any exotic big game species for a fee or other remuneration on an alternative livestock facility.

(3) A licensee shall mark alternative livestock in a manner approved by the department of livestock, as required under subsection (4), and that indicates ownership and provides individual identification of animals for inspection, transportation, reporting, and taxation purposes.

(4) The department of livestock is responsible for the control, tracking, and distribution of identification tags used for the marking of alternative livestock. The department of livestock shall require that all imported alternative livestock are marked within 30 days of importation and that all other alternative livestock are marked prior to January 1 of each year. Each alternative livestock must be marked with identification that:

(a) is unique to the animal;

(b) is nontransferable;

(c) has an emblem owned and registered by the department of livestock that is embossed on each identification tag; and

(d) allows for the identification of alternative livestock from a distance.

(5) Upon the request of a licensee, the department of livestock may grant a temporary waiver as to the time for identification and to the manner of identification if necessary to address a special circumstance.

(6) Alternative livestock must be lawfully acquired by the licensee. Alternative livestock may be kept only on a licensed alternative livestock ranch. A licensee who keeps alternative livestock owned by, leased to, or leased from another person shall comply with all of the requirements of this part as if the animal belonged to the licensee. Records and reports submitted by the licensee pursuant to 87-4-417 must identify any alternative livestock kept by the licensee during the reporting period and the name and address of the owner or lessee.

(7) Except as otherwise provided in this part, laws applicable to game animals do not apply to alternative livestock raised on a licensed alternative livestock ranch.

History: En. Sec. 9, Ch. 570, L. 1983; amd. Sec. 2, Ch. 531, L. 1991; amd. Sec. 7, Ch. 315, L. 1993; amd. Sec. 6, Ch. 503, L. 1995; amd. Sec. 15, Ch. 574, L. 1999; amd. Sec. 6, I.M. No. 143, approved Nov. 7, 2000.

Cross-References

Rabies control — restrictions on possession of certain wild animals, Title 50, ch. 23, part 1.
Prohibition of possession of certain wild animals, 50-23-102.
Property rights in wild animals, 70-2-111.
Furbearers as private property, 87-4-1008.

87-4-415. Transportation, sale, and disposal of alternative livestock — quarantine. (1) Prior to selling, transferring, transporting, or disposing of one or more alternative livestock, the alternative livestock ranch licensee shall request an inspection of the alternative livestock, which inspection must be completed by a department of livestock designated agent. All dead alternative livestock must be reported to the department of livestock within 1 working day of the discovery of the death.

(2) (a) Inspection under subsection (1) must be conducted pursuant to 81-3-203(1) through (3) and must include the number, species, age, sex, and individual identification numbers of alternative livestock transported or disposed of.

(b) A copy of the certificate of inspection must be provided by the department of livestock to the department within 10 days of inspection.

(3) The department of livestock may quarantine or issue a hold order on any alternative livestock pending inspection and health certification. The department shall notify the department of livestock regarding the importation or transportation of any alternative livestock that the department reasonably believes may be infected with a disease specific to wildlife.

History: En. Sec. 10, Ch. 570, L. 1983; amd. Sec. 3, Ch. 531, L. 1991; amd. Sec. 8, Ch. 315, L. 1993; amd. Sec. 7, Ch. 503, L. 1995; amd. Sec. 16, Ch. 574, L. 1999.

87-4-416. Sale of carcass and meat — regenerative parts excluded. (1) An alternative livestock ranch licensee may sell or otherwise dispose of the carcass of properly identified alternative livestock taken from an alternative livestock ranch in accordance with the provisions of 87-4-415. A copy of the certificate of inspection must be attached to the carcass or container. Upon the attaching of the certificate of inspection, the carcass of the alternative livestock may be transported within the state to the transferee named on the certificate of inspection.

(2) The licensee may sell alternative livestock for meat upon compliance with all applicable health laws.

(3) The sale of regenerative parts that may be harvested is specifically excluded from the requirements of this section.

History: En. Sec. 11, Ch. 570, L. 1983; amd. Sec. 9, Ch. 315, L. 1993; amd. Sec. 17, Ch. 574, L. 1999.

87-4-417. Records and reporting — rules. (1) Each alternative livestock ranch licensee shall keep and maintain for 3 years accurate written records of all alternative livestock purchases, transfers, sales, births, and deaths, on forms provided by the department, showing:

(a) the number of each species of alternative livestock purchased by the alternative livestock ranch licensee and from whom purchased;

(b) the number of each species of alternative livestock transferred or sold, the date of transfer or sale, and the name and address of the person to whom the transfer or sale was made; and

(c) individual identification of each alternative livestock that was purchased, transferred, sold, or born or that died. However, a calf or fawn that dies prior to being marked pursuant to 87-4-414(4) need not be identified.

(2) Unless a different reporting frequency has been established pursuant to subsection (3), within 2 weeks after January 1 and July 1 of each year, the alternative livestock ranch licensee shall file a report with the department, showing the number and species of alternative livestock that were on hand as of January 1 and July 1 and the number and species of alternative livestock that escaped, that were bought, sold, transferred, recaptured, or born, or that died during the reporting period.

(3) The department may establish by rule the conditions under which the frequency of reporting requirements may be reduced to one report a year or increased to three reports a year. The department may establish by rule the conditions under which a licensee may submit an abbreviated report. In adopting those rules, the department shall consider the number of animals present on an alternative livestock ranch, the number of reported transactions during previous reporting periods, a history of accurate recordkeeping, and a historical absence of violations.

History: En. Sec. 12, Ch. 570, L. 1983; amd. Sec. 4, Ch. 531, L. 1991; amd. Sec. 10, Ch. 315, L. 1993; amd. Sec. 8, Ch. 503, L. 1995; amd. Sec. 18, Ch. 574, L. 1999.

87-4-418. Unlawful capture. A person may not capture, take, or otherwise acquire any game animal in this state for use on an alternative livestock ranch.

History: En. Sec. 13, Ch. 570, L. 1983; amd. Sec. 19, Ch. 574, L. 1999.

87-4-419. Escape from alternative livestock ranch — effect. (1) If an alternative livestock animal escapes from an alternative livestock ranch, the alternative livestock licensee shall immediately notify the department of its escape and shall make every reasonable effort to recapture it. If the escaped animal cannot be recaptured within a reasonable time, the department may kill the animal. If recapture or killing of the animal is unsuccessful within a reasonable time, the animal becomes the property of the state.

(2) The department shall by rule adopt a definition of "reasonable time", as used in this section, taking into consideration specific seasonal issues related to breeding and disease.

History: En. Sec. 14, Ch. 570, L. 1983; amd. Sec. 9, Ch. 503, L. 1995; amd. Sec. 20, Ch. 574, L. 1999.

87-4-420. Taxation. All alternative livestock raised on an alternative livestock ranch may be assessed as personal property of the owner similar to other livestock.

History: En. Sec. 15, Ch. 570, L. 1983; amd. Sec. 21, Ch. 574, L. 1999.

87-4-421. Repealed. Sec. 16, Ch. 315, L. 1993.

History: En. Sec. 16, Ch. 570, L. 1983.

87-4-422. Rulemaking. (1) The department may adopt and enforce rules that are necessary to implement the provisions of this part over which the department has primary jurisdiction and to coordinate regulation of alternative livestock ranches with the department of livestock.

(2) The department of livestock may adopt and enforce rules that are necessary to implement the provisions of this part over which the department of livestock has primary jurisdiction and to coordinate regulation of alternative livestock ranches with the department of fish, wildlife, and parks.

History: En. Sec. 17, Ch. 570, L. 1983; amd. Sec. 11, Ch. 315, L. 1993; amd. Sec. 10, Ch. 503, L. 1995; amd. Sec. 22, Ch. 574, L. 1999.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Importation permits and health certificates, Title 81, ch. 2, part 7.

87-4-423. Revocation of license — procedure — disposition of animals. (1) Proceedings for the revocation of a license or the discipline of a licensee must be based on a determination by the department, after an investigation, that there is good cause and a sufficient factual basis to believe that the licensee or the principal manager is responsible for one or more of the acts or omissions set out in 87-4-427(1).

(2) The department may initiate revocation or disciplinary proceedings against a licensee by specifying the grounds in writing to the licensee and providing an opportunity for a hearing as provided in 87-4-428.

(3) Upon discovery of a violation of recordkeeping or reporting requirements that is not a material violation or an attempt to deceive, the department shall give notice of the violation to the licensee, with a statement that the violation must be corrected within 30 days of the notice, unless a longer period is approved by the department. Upon failure of the licensee to correct the violation, the department may institute revocation proceedings.

(4) (a) A licensee whose license is revoked shall lawfully dispose of any alternative livestock held pursuant to the license. Lawfully acquired and held alternative livestock may be disposed of by the licensee within 180 days of the license revocation or within a longer period if specified by the department in the revocation order. After the expiration of this period, the department shall seize and dispose of any alternative livestock that have not been lawfully disposed of by the licensee. Any proceeds that remain after deducting the department's expenses revert to the licensee. Any unrecovered costs may be charged to the licensee.

(b) The department, when it is determined to be necessary by the state veterinarian appointed pursuant to 81-1-301, may require that diseased or potentially diseased alternative livestock be quarantined or destroyed.

History: **En. Sec. 18, Ch. 570, L. 1983; amd. Sec. 5, Ch. 531, L. 1991; amd. Sec. 13, Ch. 315, L. 1993; amd. Sec. 23, Ch. 574, L. 1999.**

87-4-424. Classification — restrictions on importation of certain species. (1) In order to properly regulate importation:

(a) the department shall classify cloven-hoofed ungulates that have been determined through scientific investigation to pose a threat to native wildlife or livestock through nonspecific genetic dilution or habitat degradation or competition caused by feral populations of escaped alternative livestock and shall notify the department of livestock of any changes in classification as they occur; and

(b) the department of livestock shall classify cloven-hoofed ungulates that have been determined through scientific investigation to pose a threat to native wildlife or livestock through parasites or disease.

(2) The department of livestock shall restrict from importation for purposes of alternative livestock ranching any species or subspecies and their hybrids with native species that have been classified in accordance with subsection (1) as posing a threat to native wildlife or livestock. Importation permitted by the department of livestock must comply with the requirements of Title 81, chapter 2, part 7. Copies of import permits issued by the department of livestock must be shared with the department within 10 calendar days. Other pertinent documentation relating to importation must be shared as it becomes available.

History: **En. Sec. 7, Ch. 531, L. 1991; amd. Sec. 14, Ch. 315, L. 1993; amd. Sec. 11, Ch. 503, L. 1995; amd. Sec. 24, Ch. 574, L. 1999.**

87-4-425 reserved.

87-4-426. Repealed. Sec. 9, I.M. No. 143, Nov. 7, 2000.

History: **En. Sec. 4, Ch. 315, L. 1993; amd. Sec. 12, Ch. 503, L. 1995; amd. Sec. 25, Ch. 574, L. 1999.**

87-4-427. Revocation of license — criteria — penalties. (1) The department may revoke any alternative livestock ranch license or impose any of the penalties or conditions specified in subsection (3) if the licensee or the principal manager has committed or is responsible for any of the following acts or omissions:

(a) failure to operate an alternative livestock ranch according to the provisions of this part, rules adopted under this part, or stipulations of the alternative livestock ranch license;

(b) making a materially false statement in the license application;

(c) having pleaded guilty to or been convicted of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law;

(d) two convictions or bond forfeitures of $100 or more for violations of the fish and game laws or applicable regulations of any state or the United States within the preceding 5 years;

(e) negligent or willful misconduct of the alternative livestock ranch operation, including but not limited to the unauthorized egress and ingress of game animal species or alternative livestock that:

(i) threatens public safety;

(ii) endangers native game animal populations or habitat through the establishment of feral populations, genetic pollution, or competition for forage or habitat; or

(iii) increases the risk of transmission of disease to native wildlife and the alternative livestock of others;

(f) a material and willful falsification of any required alternative livestock ranch records or reports;

(g) the purposeful capture of wild animals within the perimeter fence of an alternative livestock ranch;

(h) repeated failure to maintain or repair required fences or facilities; or

(i) any other willful conduct or omission that creates a substantial threat to other alternative livestock and operators or to native wildlife or habitat.

(2) If misconduct under subsection (1)(e) is negligent, the licensee must be given notice and 30 days to correct the misconduct and any adverse impacts of the misconduct. Negligent misconduct may be grounds for license revocation only if the misconduct is not corrected after the initial notice or if the misconduct is repeated.

(3) If the department finds, after opportunity for a hearing required under 87-4-428, that an alternative livestock ranch licensee or the principal manager is responsible for any act or omission set out in subsection (1), the department may in its discretion impose any one or more of the following penalties upon the licensee:

(a) revocation of the alternative livestock ranch license for up to 5 years;

(b) imposition of a civil penalty not to exceed $5,000, restoration of any damage to native wildlife, or both;

(c) deferral of the revocation of a license subject to the completion of or adherence to specified conditions; or

(d) reprimand of a licensee.

(4) In addition to the revocation of a license or other penalties allowed by this section, a person who purposely or knowingly violates this part or a rule adopted pursuant to this part is subject to the penalties provided in 87-6-705.

History: En. Sec. 12, Ch. 315, L. 1993; amd. Sec. 26, Ch. 574, L. 1999; amd. Sec. 109, Ch. 258, L. 2011.

87-4-428. Right to administrative hearing. (1) A licensee must be given notice and an opportunity for a hearing before the department may refuse to renew a license, revoke a license, or discipline a licensee.

(2) The notice and an opportunity for a hearing and any judicial appeal must be conducted as provided in Title 2, chapter 4, parts 6 and 7.

History: En. Sec. 15, Ch. 315, L. 1993; amd. Sec. 27, Ch. 574, L. 1999; amd. Sec. 7, I.M. No. 143, approved Nov. 7, 2000.

87-4-429 and 87-4-430 reserved.

87-4-431. Repealed. Sec. 9, I.M. No. 143, Nov. 7, 2000.
History: En. Sec. 1, Ch. 574, L. 1999.

87-4-432. Repealed. Sec. 1, Ch. 26, L. 2013.
History: En. Sec. 13, Ch. 503, L. 1995; amd. Sec. 28, Ch. 574, L. 1999.

87-4-433. Programmatic environmental review. (1) The department, in cooperation with the department of livestock, shall, by July 1, 2001, conduct a programmatic review of environmental impacts that may be associated with the granting of a license to operate an alternative livestock ranch.

(2) In consultation with the department of livestock, the department shall select a contractor to prepare the programmatic environmental review, which must be in the form of an environmental impact statement.

(3) In addition to the department of livestock, the department shall seek the assistance and participation of other governmental agencies that have special expertise in areas that should be addressed in the programmatic.

History: **En. Sec. 29, Ch. 574, L. 1999; amd. Sec. 8, I.M. No. 143, approved Nov. 7, 2000.**

Part 5
Shooting Preserves

87-4-501. Authorization for licenses, permits, rules, and regulations. The department is hereby authorized and empowered to issue operating licenses or permits for shooting preserves, which may be privately owned and operated, and to make such rules and regulations as may be necessary and proper in carrying out the purposes of this part.

History: **En. Sec. 1, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1601.**

87-4-502. Location and posting of preserves. Operating licenses or permits may be issued to any person, partnership, association, or corporation for the operation of shooting preserves that meet the following requirements:

(1) Each shooting preserve must be restricted to private property.

(2) The exterior boundaries of each shooting preserve must be clearly defined and posted with signs erected around the extremity at intervals of one-quarter mile. Each shooting preserve must have a minimum of two signs regardless of the size of the preserve.

History: **En. Sec. 2, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1602; amd. Sec. 1, Ch. 408, L. 2009; amd. Sec. 11, Ch. 552, L. 2021; amd. Sec. 1, Ch. 82, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 82, L. 2025. Amendment effective April 7, 2025.

87-4-503. Fees. Fees for shooting preserve licenses or permits are $250 and are valid until February 28 of the fifth year following the year of issuance, unless otherwise revoked. Application for renewal must be made before a license expires. The department shall renew the license upon payment of the license fee if the licensee has complied with all recording and reporting requirements.

History: **En. Sec. 4, Ch. 265, L. 1965; R.C.M. 1947, 26-1604; amd. Sec. 4, Ch. 499, L. 2003; amd. Sec. 2, Ch. 82, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 82, L. 2025. Amendment effective April 7, 2025.

87-4-504. Bird license or stamp required. All persons hunting on shooting preserves must have a valid resident or nonresident upland game bird license or a 3-day nonresident shooting preserve bird hunting stamp issued under 87-2-404.

History: **En. Sec. 11, Ch. 265, L. 1965; R.C.M. 1947, 26-1611; amd. Sec. 3, Ch. 105, L. 1987; amd. Sec. 1, Ch. 371, L. 1991.**

87-4-505. Commercial and membership licenses and permits. Each shooting preserve license or permit issued by the department shall designate whether or not the preserve is open to the public on a commercial basis or is restricted to a membership or other limited group. In the latter case, the license or permit shall specify that the area is a restricted shooting preserve. The department shall maintain accurate listings of the names, addresses, and the location of the property of all persons to whom shooting preserve licenses or permits are issued. Said lists shall be made available in their entirety to anyone requesting same and shall specify whether the preserves are public or private.

History: **En. Sec. 12, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1612.**

87-4-506. Revocation of license or permit and reissuance. The department may revoke any shooting preserve license or permit issued under the authority of this part when the licensee has violated any of the provisions of this part or any rule or regulation of the department. After such revocation, a new license or permit may be issued if in the discretion of the department the circumstances so warrant.

History: **En. Sec. 13, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1613.**

87-4-507 through 87-4-520 reserved.

87-4-521. Duration of season. The season established for shooting preserves is the 7-month period beginning September 1 and ending March 31.

History: **En. Sec. 7, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1607; amd. Sec. 2, Ch. 371, L. 1991.**

87-4-522. Game hunted in preserve. (1) Game that may be hunted under this part must be confined to artificially propagated ring-necked pheasants with no color mutations, chukar partridges, Merriam's turkeys, Hungarian partridges, and other species authorized by the department.

(2) Artificially propagated upland game birds released on a shooting preserve during the shooting preserve season must be at least 14 weeks of age and must be marked prior to release in a manner that distinguishes them from wild upland game birds.

(3) For each shooting preserve season, a shooting preserve operator shall maintain a record of the total number, by species and source, of artificially propagated upland game birds released and harvested and the number of wild upland game birds harvested in the preserve. The record must be open to inspection by a delegated representative of the department at any reasonable time.

History: **En. Sec. 3, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1603; amd. Sec. 5, Ch. 499, L. 2003; amd. Sec. 12, Ch. 552, L. 2021; amd. Sec. 3, Ch. 82, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 82, L. 2025. Amendment effective April 7, 2025.

87-4-523. Repealed. Sec. 7, Ch. 82, L. 2025.

History: **En. Sec. 5, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1605.**

87-4-524. Preserve operators to establish shooting restrictions. (1) Shooting preserve operators licensed prior to July 1, 2003, may establish their own shooting limitations and restrictions on the age, sex, and number of each species that may be taken by each person.

(2) The department may impose restrictions on a shooting preserve license issued after July 1, 2003, in an area that supports existing native upland game bird species if the department determines that the restrictions are necessary to protect native populations. The restrictions must be based on sound biological principles.

History: **En. Sec. 6, Ch. 265, L. 1965; R.C.M. 1947, 26-1606; amd. Sec. 6, Ch. 499, L. 2003; amd. Sec. 4, Ch. 82, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 82, L. 2025. Amendment effective April 7, 2025.

87-4-525. Reporting of game. All harvested game must be accompanied by a harvest form provided by the department until the game is consumed. The department shall furnish the harvest form at no cost to shooting preserve operators.

History: **En. Sec. 8, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1608; amd. Sec. 5, Ch. 82, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 82, L. 2025. Amendment effective April 7, 2025.

87-4-526. Repealed. Sec. 25, Ch. 552, L. 2021.

History: **En. Sec. 9, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1609; amd. Sec. 7, Ch. 499, L. 2003.**

87-4-527. Wild game on preserve. Any wild game found on shooting preserves may be harvested in accordance with applicable license, game, and hunting laws pertaining to open seasons, bag and possession limits, and rules, as are established regularly by the department and the U.S. fish and wildlife service.

History: **En. Sec. 10, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1610; amd. Sec. 3, Ch. 371, L. 1991.**

87-4-528. Unscheduled inspections by department. The department shall conduct unscheduled inspections of all shooting preserves licensed under this part to ensure that pertinent statutes as well as the rules and regulations of the department are being followed and obeyed.

History: En. Sec. 14, Ch. 265, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1614.

Cross-References

Entry on private land — policy, 87-1-229.

87-4-529. Penalties. A person who violates this part is subject to the penalties provided in 87-6-706.

History: En. Sec. 81, Ch. 258, L. 2011.

87-4-530. Use of temporary holding pens. (1) During the shooting preserve season established in 87-4-521, artificially propagated upland game birds may be held in temporary holding pens for up to 120 days after being delivered to a shooting preserve to acclimate them to the shooting preserve environment.

(2) Any bird held in a temporary holding pen that has not been released on the shooting preserve may not be sold without obtaining a game bird farm license under Title 87, chapter 4, part 9.

History: En. Sec. 1, Ch. 132, L. 2013; amd. Sec. 13, Ch. 552, L. 2021.

Part 6
Fish Ponds, Seining, and Commercial Taking of Aquatic Fish Food Organisms

87-4-601. Repealed. Sec. 7, Ch. 39, L. 2025.

History: En. Sec. 21, Ch. 173, L. 1917; re-en. Sec. 3713, R.C.M. 1921; re-en. Sec. 3713, R.C.M. 1935; amd. Sec. 11, Ch. 224, L. 1947; amd. Sec. 35, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-331; amd. Sec. 1, Ch. 52, L. 1979; amd. Sec. 2, Ch. 267, L. 1983; amd. Sec. 1, Ch. 152, L. 1987; amd. Sec. 1, Ch. 409, L. 1989; amd. Sec. 2, Ch. 28, L. 1991; amd. Sec. 1, Ch. 68, L. 1991; amd. Sec. 1, Ch. 196, L. 1993; amd. Sec. 6, Ch. 84, L. 2003; amd. Sec. 1, Ch. 333, L. 2003; amd. Sec. 110, Ch. 258, L. 2011; amd. Sec. 1, Ch. 34, L. 2017; amd. Sec. 38, Ch. 3, L. 2019.

87-4-602. Seining licenses. The director shall keep a record of all licenses issued for the use of a net for the taking of fish, showing the name of the applicant, the date of issuance, the waters that the netting is to be used in, and the date of revocation if the license is revoked. The director shall pay all fees received for those licenses into the state treasury to the credit of the fish and game account in the state special revenue fund. A license may not be issued to a person whose license has been revoked for cause.

History: En. Sec. 23, Ch. 173, L. 1917; re-en. Sec. 3715, R.C.M. 1921; re-en. Sec. 3715, R.C.M. 1935; amd. Sec. 30, Ch. 511, L. 1973; R.C.M. 1947, 26-333; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2856, Ch. 56, L. 2009.

Cross-References

Use of fish and game money, 87-1-601, 87-1-701.

87-4-603. Fish pond license for private fish pond — site inspections — records. (1) A person who owns or lawfully controls a private fish pond shall apply to the department for a fish pond license. The licensee may stock the fish pond with fish procured from a lawful source. The licensee may take fish from the pond in any manner.

(2) The department may designate the species of fish that may be released in the pond and otherwise condition the license if:

(a) there is a possibility of fish escaping from the pond into adjacent streams or lakes; or

(b) in the department's determination, the pond poses a risk of introduction of a pathogen or an invasive species, as defined in 80-7-1003.

(3) (a) "Private fish pond", as used in 87-4-606 and this section, means a body of water that does not exceed 500 surface acres, is determined by the department to not pose an unacceptable risk to game fish or fish species of concern in adjacent waters, including a risk of introduction of a pathogen or an invasive species, as defined in 80-7-1003, and is:

(i) created by artificial means with an associated water right as defined in 85-2-102 that includes the appropriate beneficial use; or

(ii) an instream pond with a tributary spring or stream that does not support game fish or fish species of special concern.

(b) The term does not include all other natural ponds or bodies of water, including streams or rivers and impoundments or reservoirs of or on a natural stream, river, lake, or pond.

(4) An applicant for licensing of an instream private fish pond shall present to the department verification that game fish or fish species of special concern do not occur in the tributary, spring, or stream and that the instream private fish pond does not pose an unacceptable risk to game fish or fish species of special concern in adjacent waters, including a risk from the introduction of a pathogen or an invasive species as defined in 80-7-1003. Verification must be in the form of:

(a) a formal report from a department-approved professional fisheries consultant; or

(b) other department-approved data and documentation.

(5) The department may condition a fish pond license to require the construction, implementation, operation, and maintenance of measures or devices to prevent fish in a private fish pond from escaping into adjacent waters and posing a risk of introduction of a pathogen or invasive species as defined in 80-7-1003. The department may deny a license if these conditions are not met.

(6) A licensee who sells fish, eggs, or fry from a private fish pond must meet these additional requirements:

(a) The license must be renewed annually pursuant to 87-4-606.

(b) Before selling fish, eggs, or fry from the pond, the licensee must provide a corporate surety bond to the state for $2,500. This bond is conditioned on:

(i) maintaining compliance with the terms of the fish pond license issued to the person; and

(ii) not selling fish or spawn from any of the public waters of the state.

(c) A licensee who sells fish or eggs from a private fish pond shall keep accurate records of:

(i) the species and quantities of fish or eggs sold or purchased;

(ii) dates of sales or purchases;

(iii) names of purchasers or sellers;

(iv) fish health inspections or department certifications for the facility or pond, including dates and results;

(v) a purchaser's private fish pond license number and verification that the license was valid for the species of fish or eggs purchased; and

(vi) locations or addresses to or from which fish or eggs are transferred.

(d) On or before January 31 of each year, a licensee who sells fish or eggs shall file a report with the department, on forms made available by the department, summarizing the records required under subsection (6)(c).

(7) A person who owns or controls a private fish pond may request an inspection by the department to ascertain the presence of disease in fish or the illegal introduction of fish species. Whenever the department has reasonable cause to believe that a fish species in the pond may have been illegally introduced or may have a disease that may affect fish in another body of water, the department shall notify the landowner or landowner's agent by mail or in person of the intention to enter upon the land and shall enter only after notice has been given to the landowner or agent or after every reasonable effort has been made to notify the landowner and receive permission to enter upon the land. Thereafter, the department may enter upon land under the provisions of this subsection for the purposes of inspecting the pond, the species of fish in the pond, the presence of disease in a fish species, the construction of any impoundment, dam, or fish barrier, and the physical connection of a pond to an adjacent natural lake, pond, or body of water, including a stream or river. The department is responsible for actual damages to any property.

(8) If the department finds an illegal introduction of fish or the presence of disease in fish in a licensed private fish pond or a natural lake, pond, or body of water, the department shall consult with the landowner or the landowner's agent to determine the appropriate action unless an emergency exists. In an emergency situation, the department may order or take appropriate action to address any threat to the state's fisheries resources, including quarantine or destruction of fish, eggs, or the source of a disease. Whenever privately owned fish are destroyed and the private owner is not responsible for an illegal introduction or the introduction of fish with a disease, the department may replace the destroyed fish without charge to the private owner. A

landowner or agent who has granted permission for the department to enter is not considered responsible for an illegal introduction of fish or disease unless proved otherwise.

(9) The department may adopt rules necessary for the regulation of private fish ponds as provided in this section, including but not limited to department certification of a health standard, frequency of department certification, pond design and function, inspections, reporting requirements, and other measures to prevent damage to public fish and wildlife resources.

History: En. Sec. 14A, Ch. 238, L. 1921; re-en. Sec. 3695, R.C.M. 1921; amd. Sec. 6, Ch. 77, L. 1923; amd. Sec. 1, Ch. 43, L. 1929; re-en. Sec. 3695, R.C.M. 1935; amd. Sec. 1, Ch. 125, L. 1949; amd. Sec. 28, Ch. 511, L. 1973; amd. Sec. 32, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-306; amd. Sec. 9, Ch. 376, L. 1989; amd. Sec. 1, Ch. 425, L. 1995; amd. Sec. 1, Ch. 108, L. 1999; amd. Sec. 1, Ch. 277, L. 2019; amd. Sec. 1, Ch. 278, L. 2019; amd. Sec. 1, Ch. 39, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 39, L. 2025. Amendment effective April 3, 2025.

Cross-References

Suretyship, Title 28, ch. 11, part 4.
Entry on private land — policy, 87-1-229.

87-4-604. Repealed. Sec. 4, Ch. 246, L. 1989.

History: En. Sec. 1, Ch. 13, L. 1965; amd. Sec. 45, Ch. 9, L. 1977; R.C.M. 1947, 26-708.

87-4-605. Records and report of whitefish sales by fishing license holders. A holder of a fishing license who catches whitefish for speculative purposes, for market, or for sale shall keep a record and make an annual report to the department of the number of whitefish sold and the date of each sale. The annual report shall be submitted to the appropriate department regional office within 15 days of the end of the license year.

History: En. Sec. 2, Ch. 52, L. 1979.

87-4-606. Term of fish pond license — fees — license not transferable — exception for transfer — rulemaking. (1) Except as provided in subsections (3) and (4), a fish pond license issued pursuant to 87-4-603 is valid for 10 years. An application must be on a form prescribed by the department and must include the following to be considered correct and complete:

(a) contact information concerning the property owner, and if applicable, the property management;

(b) an accurate and complete description of the pond location, including whether the pond is off stream or on stream, physical information concerning the construction and design of an off-stream pond, and a detailed plan of operation;

(c) documentation of lawful source of fish to be stocked;

(d) documentation of water right, as defined in 85-2-102.

(2) There is a $600 application fee and a $250 renewal fee for each fish pond license.

(3) (a) Except as provided in subsections (3)(b) and (4), a fish pond license expires on February 28 of the 10th year following the year of issuance or renewal.

(b) A licensee who sells fish or eggs under 87-4-603 shall renew the license annually. The license expires on February 28 of the year following the year of issuance.

(c) (i) An application for renewal must be made before a license expires. The renewal application must be made on a form prescribed by the department.

(ii) The department may renew the license if the licensee has not violated a condition upon which the license was granted and if the licensee has met all of the requirements governing private fish ponds in 87-4-603, administrative rules, and this section.

(iii) The department may only deny a renewal if the department receives documented, substantive, new information since the issuance of the original permit about the threat or risk to game fish or fish species of concern in adjacent waters.

(iv) If the department does not renew a license, the department shall:

(A) provide in writing to the applicant the reasons for not renewing;

(B) allow 30 days for a response from the applicant; and

(C) provide for a show cause hearing to address deficiencies and to craft a mitigation plan to the newly identified threat or risk. The department may agree to the mitigation plan and subsequently renew the license.

(4) A new license is required when a licensee proposes to plant a new species or stock a pond not designated in the original license.

(5) (a) Except as provided in subsection (5)(b), a fish pond license granted under 87-4-603 is not transferable.

(b) If ownership or control of the private fish pond changes, the new owner or operator shall apply to the department for a license transfer on a form prescribed by the department. The transfer must be approved by the department before the new owner or operator may continue operation of the private fish pond.

(c) A transferred license retains the remaining portion of the original license's term.

(d) There is a $250 application fee to transfer the fish pond license.

(6) The department may adopt rules necessary to implement the provisions of this section, including but not limited to the format and requirements of the application form, conditions for renewal licenses, and eligibility requirements for the transfer of licenses.

History: En. Sec. 10, Ch. 376, L. 1989; amd. Sec. 1, Ch. 157, L. 2005; amd. Sec. 2, Ch. 277, L. 2019; amd. Sec. 2, Ch. 39, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 39, L. 2025. Amendment effective April 3, 2025.

87-4-607. Revocation of fish pond license — penalties and fines — rulemaking. (1) If the department discovers a violation of this part, it may institute revocation proceedings after providing reasonable notice and opportunity for a hearing to the licensee. After the hearing and upon proof of the violation, the department may revoke the fish pond license.

(2) The department may adopt rules necessary to implement the provisions of this section, including those related to compliance strategies, penalties, and fines.

History: En. Sec. 11, Ch. 376, L. 1989; amd. Sec. 3, Ch. 277, L. 2019; amd. Sec. 3, Ch. 39, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 39, L. 2025. Amendment effective April 3, 2025.

87-4-608. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 1, Ch. 456, L. 1993.

87-4-609. Regulation of commercial taking of fish or aquatic organisms — permit — rulemaking authority. (1) The department shall regulate the taking, for sale or commercial distribution, of:

(a) crayfish for fishing bait;

(b) crayfish from private fish ponds regulated under 87-4-603;

(c) mysis shrimp;

(d) designated species of nongame fish in waters designated by the commission pursuant to 87-3-204;

(e) whitefish as authorized by statute; and

(f) other aquatic organisms.

(2) In order to obtain a permit to take fish or aquatic organisms for sale or commercial distribution, an applicant shall provide the department with sufficient details of the proposed operation to enable the department to evaluate any potential overharvest or conflict with existing fishing and recreational uses of the waters.

(3) The department may:

(a) deny a permit if it determines that there is substantial potential that the proposed operation may harm a fishery or conflict with existing recreational uses of the waters;

(b) condition a permit to restrict the method of taking, the location of the taking, and the quality and quantity of harvest to prevent overharvest or conflict with existing fishing and recreational uses of the waters; or

(c) require a permittee to submit harvest data to the department.

(4) A permit may be revoked for a violation of the conditions of the permit.

(5) The department may adopt rules for the regulation of commercial taking of fish or aquatic organisms, including but not limited to the setting of seasons, methods of taking, quantities of harvest, size limitations, and reporting requirements, to prevent overharvest or conflict with fishing and recreational uses of the waters.

History: En. Sec. 1, Ch. 246, L. 1989; amd. Sec. 2, Ch. 456, L. 1993; amd. Sec. 7, Ch. 84, L. 2003; amd. Sec. 111, Ch. 258, L. 2011.

87-4-610. Fees for commercial taking of fish or aquatic organisms — use of fees. (1) To finance the administration and enforcement of the provisions of 87-4-609, the department may by rule set reasonable fees for:

(a) issuance of the permit required in 87-4-609; and

(b) use of traps, nets, or seines in Montana waters for the commercial taking of nongame fish, whitefish, as authorized by statute, or aquatic organisms.

(2) The department shall deposit any fees collected under the provisions of subsection (1) in the state special revenue fund for use by the department.

History: En. Sec. 2, Ch. 246, L. 1989; amd. Sec. 8, Ch. 84, L. 2003.

Part 7
Sale of Game in Commercial Trade

87-4-701. Definitions. (1) The words "game" and "game birds" or "parts of the same" mean the game animals and game birds, the killing of which is restricted or forbidden by the laws of Montana.

(2) The words "merchant", "hotelkeeper", or "restaurant keeper" mean each manager, servant, agent, or employer of such person.

(3) The word "sale", as used in the statute laws of this state touching the sale of game and fish, the sale of which is prohibited by law, does and shall be considered to mean:

(a) a contract by which, for a pecuniary consideration called a price, one transfers an interest in either game or fish;

(b) a contract by which, for an article or thing of value, one transfers, barters, or exchanges an interest either in game or fish.

History: (1), (2)En. Sec. 62, Ch. 173, L. 1917; re-en. Sec. 3741, R.C.M. 1921; amd. Sec. 30, Ch. 192, L. 1925; re-en. Sec. 3741, R.C.M. 1935; amd. Sec. 15, Ch. 9, L. 1977; Sec. 26-805, R.C.M. 1947; (3)En. Sec. 64, Ch. 173, L. 1917; re-en. Sec. 3743, R.C.M. 1921; re-en. Sec. 3743, R.C.M. 1935; Sec. 26-808, R.C.M. 1947; R.C.M. 1947, 26-805, 26-808.

87-4-702. Possession of game by merchants, hotelkeepers, or restaurant keepers. (1) Except as provided in subsection (2), it is lawful for any merchant, hotelkeeper, or restaurant keeper to have in the person's possession, offer for sale, or sell game birds and game if the game or game birds are not killed in Montana.

(2) A merchant, hotelkeeper, or restaurant keeper may not offer for sale or sell any grizzly bear or any head, hide, teeth, claws, or other part of a grizzly bear.

History: En. Sec. 58, Ch. 173, L. 1917; re-en. Sec. 3737, R.C.M. 1921; re-en. Sec. 3737, R.C.M. 1935; amd. Sec. 13, Ch. 9, L. 1977; R.C.M. 1947, 26-801; amd. Sec. 4, Ch. 540, L. 1985; amd. Sec. 2857, Ch. 56, L. 2009.

Cross-References

Disposition of seized grizzly bears, 87-1-511.

87-4-703. Evidence of lawful possession of game. Each merchant, hotelkeeper, or restaurant keeper who possesses and offers for sale any game or game birds shall produce upon demand, for the inspection of any game warden, deputy game warden, or sheriff, the receipt or record and shipping and transportation receipts required in 87-4-704 to be kept by the person. A failure or refusal to produce the receipts upon demand, coupled with the possession and offering for sale of game or game birds, is prima facie evidence of the violation of this part.

History: En. Sec. 59, Ch. 173, L. 1917; re-en. Sec. 3738, R.C.M. 1921; re-en. Sec. 3738, R.C.M. 1935; amd. Sec. 14, Ch. 9, L. 1977; R.C.M. 1947, 26-802; amd. Sec. 2858, Ch. 56, L. 2009.

87-4-704. Record to be kept. It is the duty of a person who has in the person's possession and offers for sale any game or game birds to keep a record showing the amount and kind of game and game birds received by the person, together with shipping and transportation receipts showing the true time and place of shipment of the game and game birds and the name of the person shipping the game and game birds. However, any merchant in Montana selling game or game birds to any hotelkeeper, restaurant keeper, or other person shall, in addition to the record and receipts required to be kept by the merchant, keep a record of the date of sale, the kind and amount of game or game birds, and the name of the purchaser. In the case of hotelkeepers, restaurant keepers, or other persons buying game or game birds from a merchant within the state of Montana, a receipt from the merchant showing the date and the kind and amount of game or game birds purchased is sufficient evidence of compliance with the provisions of this part by the hotelkeeper, restaurant keeper, or other person.

History: **En. Sec. 60, Ch. 173, L. 1917; re-en. Sec. 3739, R.C.M. 1921; re-en. Sec. 3739, R.C.M. 1935; R.C.M. 1947, 26-803; amd. Sec. 2859, Ch. 56, L. 2009.**

87-4-705. Noncompliance with law. It is unlawful for a person to have in the person's possession and offer for sale or sell any game or game birds without having complied with the provisions of 87-4-704 relating to the keeping of a record and shipping and transportation receipts.

History: **En. Sec. 61, Ch. 173, L. 1917; re-en. Sec. 3740, R.C.M. 1921; re-en. Sec. 3740, R.C.M. 1935; amd. Sec. 23, Ch. 224, L. 1947; amd. Sec. 46, Ch. 9, L. 1977; R.C.M. 1947, 26-804; amd. Sec. 2860, Ch. 56, L. 2009.**

Cross-References

Unlawful sale of wild birds, 87-5-201.

Part 8
Menageries, Sanctuaries, and Zoos

87-4-801. Definitions. As used in this part unless the context requires otherwise, the following definitions apply:

(1) "Roadside menagerie" means any place where one or more wild animals, including birds, reptiles, and the like, are kept in captivity for the evident purpose of exhibition, attracting trade, or other commercial purposes on or off the facility premises. It does not include the exhibition of any animal by an educational institution or by a traveling theatrical exhibition or circus based outside of Montana.

(2) "Wild animal" means an animal that is wild by nature as distinguished from the common domestic animals, whether the animal was bred or reared in captivity, and includes birds and reptiles.

(3) "Wild animal menagerie" means any place where one or more bears or large cats, including cougars, lions, tigers, jaguars, leopards, pumas, cheetahs, ocelots, and hybrids of those large cats are kept in captivity for use other than public exhibition.

(4) "Wildlife sanctuary" means a facility organized as a Montana nonprofit corporation pursuant to Title 35, chapter 2, or in good standing with and accredited by the American sanctuary association or the global federation of animal sanctuaries for the purpose of providing homes for nonreleasable wild animals. Accreditation and good standing must be proven with a copy of an accreditation report completed as required by the accrediting organization.

(5) "Zoo" means any zoological garden chartered as a nonprofit corporation by the state or in good standing with and accredited by the association of zoos and aquariums or the zoological association of America for the purpose of exhibiting wild animals for public viewing. Accreditation and good standing must be proven with a copy of an accreditation report completed as required by the accrediting organization.

History: **En. Sec. 1, Ch. 130, L. 1969; amd. Sec. 45, Ch. 511, L. 1973; R.C.M. 1947, 26-1205; amd. Sec. 2, Ch. 322, L. 1999; amd. Sec. 1, Ch. 211, L. 2021.**

Cross-References

Rabies control — restrictions on possession of certain wild animals, Title 50, ch. 23, part 1.

87-4-802. *(Temporary)* **Department regulations.** The department shall adopt and enforce reasonable regulations for the housing, care, treatment, feeding, and sanitation of animals kept in roadside menageries, wild animal menageries, wildlife sanctuaries, and zoos, for the protection of the public from injury by those animals, and for the licensing of roadside menageries, wild animal menageries, wildlife sanctuaries, and zoos.

87-4-802. *(Effective March 1, 2026)* **Department regulations.** The department shall adopt and enforce reasonable regulations for the housing, care, treatment, feeding, and sanitation of animals kept in roadside menageries, wild animal menageries, wildlife sanctuaries, and zoos, for the protection of the public from injury by those animals, and for the licensing of roadside menageries, wild animal menageries, wildlife sanctuaries, and zoos. A written record required by the department must be maintained for 5 years and must be open to inspection by a warden or the director at any reasonable time.

History: **En. Sec. 2, Ch. 130, L. 1969; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1206(2); amd. Sec. 3, Ch. 322, L. 1999; amd. Sec. 2, Ch. 211, L. 2021; amd. Sec. 3, Ch. 50, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 50, L. 2025. Amendment effective March 1, 2026.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

87-4-803. *(Temporary)* **Permits.** (1) The department may grant permits for roadside menageries, wild animal menageries, wildlife sanctuaries, and zoos. Application for a permit must be made to the director on a form prescribed by the director. The annual permit fee for five or less animals is $10. The annual permit fee for more than five animals is $25. Permits expire on December 31 but may be renewed upon payment of the annual fee and submission of a renewal application. This section does not apply to the United States, the state of Montana, or any county or city. A person who subscribes to any false statement in application for a permit is subject to the provisions of 87-6-715 and may be denied a permit.

(2) (a) A permit application for a roadside menagerie must include:
(i) the applicant's name and address;
(ii) the exact location of the facility;
(iii) a list of species and the number of animals to be held in the facility;
(iv) the type of facility contemplated, including cage specifications;
(v) a copy of all required federal permits for exhibition of wild animals; and
(vi) a copy of a liability insurance policy to cover bodily injury or property damage.

(b) A permit application for a wild animal menagerie must include:
(i) the applicant's name and address;
(ii) the exact location of the facility, together with the nature of the applicant's title to the land, whether in fee, under lease, by contract for deed, or otherwise;
(iii) a list of species and the number of animals to be held in the facility;
(iv) the type of facility contemplated, including cage specifications; and
(v) information demonstrating that the applicant is responsible.

(c) A permit application for a wildlife sanctuary or a zoo must include:
(i) the applicant's name and address;
(ii) the exact location of the facility;
(iii) a copy of the nonprofit corporation documents approved by the secretary of state's office;
(iv) a copy of the required federal permits for exhibition of wild animals; and
(v) if applicable, a copy of the association of zoos and aquariums, the zoological association of America, the American sanctuary association, or the global federation of animal sanctuaries accreditation program specific to the facility.

(3) Renewal applications for roadside menageries and wild animal menageries must include an accounting of all wild animals on the facility.

(4) A permit may not be granted by the department until it has satisfactorily verified that the provisions for housing and caring for the animals and for protecting the public are proper and adequate and in accordance with the standards established by the department.

(5) A permit is not transferable to another person.

87-4-803. *(Effective March 1, 2026)* **Permits.** (1) (a) The department may grant permits for roadside menageries, wild animal menageries, wildlife sanctuaries, and zoos. Application for a permit must be made to the director on a form prescribed by the director.

(b) The annual permit fee for five or fewer animals is $10. The annual permit fee for more than five animals is $25. Permits are valid for the year in which they are issued through February 28 of the year following issuance but may be renewed upon payment of the annual fee and submission of a renewal application.

(c) This section does not apply to roadside menageries, wild animal menageries, wildlife sanctuaries, and zoos operated by the United States, the state of Montana, or any county or city.

(d) A person who subscribes to any false statement in an application for a permit is subject to the provisions of 87-6-715 and may be denied a permit.

(2) (a) A permit application for a roadside menagerie must include:
(i) the applicant's name and address;
(ii) the exact location of the facility;

(iii) a list of species and the number of animals to be held in the facility;
(iv) the type of facility contemplated, including cage specifications;
(v) a copy of all required federal permits for exhibition of wild animals; and
(vi) a copy of a liability insurance policy to cover bodily injury or property damage.
(b) A permit application for a wild animal menagerie must include:
(i) the applicant's name and address;
(ii) the exact location of the facility, together with the nature of the applicant's title to the land, whether in fee, under lease, by contract for deed, or otherwise;
(iii) a list of species and the number of animals to be held in the facility;
(iv) the type of facility contemplated, including cage specifications; and
(v) information demonstrating that the applicant is responsible.
(c) A permit application for a wildlife sanctuary or a zoo must include:
(i) the applicant's name and address;
(ii) the exact location of the facility;
(iii) a copy of the nonprofit corporation documents approved by the secretary of state's office;
(iv) a copy of the required federal permits for exhibition of wild animals; and
(v) if applicable, a copy of the association of zoos and aquariums, the zoological association of America, the American sanctuary association, or the global federation of animal sanctuaries accreditation program specific to the facility.

(3) Renewal applications for roadside menageries and wild animal menageries must include an accounting of all wild animals on the facility.

(4) A permit may not be granted by the department until it has satisfactorily verified that the provisions for housing and caring for the animals and for protecting the public are proper and adequate and in accordance with the standards established by the department.

(5) A permit is not transferable to another person.

History: En. Secs. 2, 3, Ch. 130, L. 1969; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1206(1), 26-1207; amd. Sec. 4, Ch. 322, L. 1999; amd. Sec. 112, Ch. 258, L. 2011; amd. Sec. 3, Ch. 211, L. 2021; amd. Sec. 4, Ch. 50, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 50, L. 2025. Amendment effective March 1, 2026.

87-4-804. Permit to obtain wild animals. (1) It is unlawful to obtain healthy wild animals for a roadside menagerie, wild animal menagerie, wildlife sanctuary, or zoo by capture from the wild or by purchase except that the capture and holding of injured wildlife or wildlife deemed nonreleasable by the department and the United States fish and wildlife service due to injury, human conflict, or seizure is permissible in accordance with the terms of a permit issued pursuant to this section.

(2) Application for a capture permit may be made only by a wildlife sanctuary or a zoo and must be made to the director on a form prescribed by the director. After investigation by the department, the director may issue a capture permit without charge if the director finds:
(a) that all provisions of this part and of the department regulations are complied with by the applicant; and
(b) that the number and species of wildlife desired is not excessive under the circumstances.

(3) If wild animals are to be obtained by capture for use in a wildlife sanctuary or a zoo, the permit must designate the number and the means of capture, but ownership of the wild animals captured must remain in the state of Montana.

(4) Roadside menageries, wild animal menageries, wildlife sanctuaries, and zoos may obtain captive-bred wild animals from a licensed zoo, menagerie, alternative livestock ranch, fur farm, game bird farm, wildlife sanctuary, or animal rehabilitation center.

(5) Wild animals may be bought, sold, or transferred under regulations that the department prescribes.

(6) The number of wild animals in a wild animal menagerie may not exceed 10.

History: En. Sec. 4, Ch. 130, L. 1969; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1208; amd. Sec. 5, Ch. 322, L. 1999; (5) and (6) En. Sec. 7, Ch. 322, L. 1999; amd. Sec. 4, Ch. 211, L. 2021.

87-4-805. Repealed. Sec. 8, Ch. 322, L. 1999.

History: En. Sec. 5, Ch. 130, L. 1969; R.C.M. 1947, 26-1209.

87-4-806. Inspection, permit revocation, and redemption of wildlife. A roadside menagerie, wild animal menagerie, wildlife sanctuary, or zoo and all equipment used in connection with a roadside menagerie, wild animal menagerie, wildlife sanctuary, or zoo must be open to inspection at all reasonable hours. If upon inspection it is found that the roadside menagerie, wild animal menagerie, wildlife sanctuary, or zoo is not being operated in accordance with this part or with the department regulations, the director may revoke the permit without right of renewal. If a permit is revoked, the department shall take possession of all wildlife obtained by capture or unlawful propagation.

History: En. Sec. 6, Ch. 130, L. 1969; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1210; amd. Sec. 6, Ch. 322, L. 1999; amd. Sec. 5, Ch. 211, L. 2021.

Cross-References

Entry on private land — policy, 87-1-229.

87-4-807. Enforcement and penalty. (1) The provisions of this part must be enforced by any warden or any other legally authorized officer. Any person violating the provisions of this part shall upon conviction be punished as provided in 87-6-715, and at the discretion of the court, the permit and all rights and privileges inherent in the permit may be forfeited.

(2) Any animals being kept in violation of any section of this part may be confiscated or ordered disposed of at the discretion of the director. The permittee may appeal to the commission within 20 days of the date of the order to confiscate, and the commission shall hold a hearing on an appeal. The decision of the commission is final.

History: En. Sec. 7, Ch. 130, L. 1969; amd. Sec. 5, Ch. 465, L. 1977; R.C.M. 1947, 26-1211; amd. Sec. 113, Ch. 258, L. 2011.

Cross-References

Contested case procedure and judicial review of contested cases, Title 2, ch. 4, parts 6 and 7.
Fish and Wildlife Commission as quasi-judicial board, 2-15-3402.

87-4-808. Fines, bonds, penalties, and fees. Fines, bonds, or penalties, except those obtained by a justice's court, shall be administered and disposed of in accordance with the provisions of 87-1-601. Fees obtained under this part must be deposited with the department of revenue and credited to the state special revenue fund, fish and game account.

History: En. Sec. 8, Ch. 130, L. 1969; amd. Sec. 46, Ch. 511, L. 1973; R.C.M. 1947, 26-1212; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 63, Ch. 557, L. 1987; amd. Sec. 46, Ch. 257, L. 2001.

Cross-References

State contribution paid into game wardens' and peace officers' retirement account, 19-8-504.
Department to control money received from fines, 87-1-201.

Part 9
Game Bird Farms

Part Cross-References

Minimum wage for employees, 39-3-402, 39-3-404, 39-3-406.
Unemployment insurance coverage — agricultural labor, 39-51-205.
Rabies control — restrictions on possession of certain wild animals, Title 50, ch. 23, part 1.
Fee limitation for multiple licenses, 87-1-606.

87-4-901. Definitions. For purposes of this part, the following definitions apply:

(1) "Game bird farm" means an enclosed area upon which game birds may be kept for purposes of obtaining, rearing in captivity, keeping, and selling game birds or parts of game birds as authorized under this part.

(2) "Game birds" means all birds defined as upland game birds in 87-2-101.

History: En. Sec. 20, Ch. 570, L. 1983; amd. Sec. 8, Ch. 499, L. 2003.

87-4-902. Exemption. This part does not apply to:

(1) a person who owns, controls, or propagates game birds for purposes other than sale or conveyance of game birds or parts of game birds;

(2) the holder of a migratory game bird avicultural permit under 87-2-807; or

(3) the holder of a shooting preserve license under Title 87, chapter 4, part 5, who uses temporary holding pens pursuant to 87-4-530.

History: En. Sec. 21, Ch. 570, L. 1983; amd. Sec. 2, Ch. 262, L. 1985; amd. Sec. 2, Ch. 132, L. 2013; amd. Sec. 1, Ch. 49, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 49, L. 2025. Amendment effective July 1, 2025.

87-4-903. Game bird farm license required. Except as provided in 87-4-902, a person may not own, control, or propagate game birds unless the person holds a current game bird farm license from the department. A person who violates this section is subject to the penalties provided in 87-6-716.

History: En. Sec. 22, Ch. 570, L. 1983; amd. Sec. 2861, Ch. 56, L. 2009; amd. Sec. 114, Ch. 258, L. 2011.

87-4-904. Application for game bird farm license — limitation on issuance. (1) A person desiring to obtain a game bird farm license shall make a written application to the department. The application must be submitted on a form provided by the department and specify:

(a) the name of the applicant;
(b) the applicant's address;
(c) the species of game bird and any plans to propagate them;
(d) the legal description of the lands to be included;
(e) the type of fence or enclosure that the applicant contemplates erecting;
(f) the source of game birds; and
(g) for a nonresident owner, the name and address of a local resident agent.

(2) (a) A game bird farm license may be issued only to a responsible applicant who owns or leases the premises on which the operations are to be conducted and who has properly fenced or otherwise enclosed the place where the game bird farm is to be located.

(b) A game bird farm owned by a nonresident must have a resident agent who is responsible for the daily operation of the farm and who is authorized by the nonresident owner to receive service of process.

(3) Within 60 days of receiving the application, the department shall notify the applicant of its decision to approve or deny the application. If the required fencing or enclosure has not been completed, the department shall approve the application subject to the fencing or enclosure being completed. If the application is denied, the department shall specify the reasons for denial.

History: En. Sec. 23, Ch. 570, L. 1983; amd. Sec. 2862, Ch. 56, L. 2009; amd. Sec. 2, Ch. 49, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 49, L. 2025. Amendment effective July 1, 2025.

87-4-905. License fee — deposit of fees. (1) A game bird farm license is $300.

(2) The fees must be deposited in the state special revenue fund for the use of the department for purposes of this part.

History: En. Sec. 24, Ch. 570, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 3, Ch. 49, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 49, L. 2025. Amendment effective July 1, 2025.

Cross-References

Fee limitation for multiple licenses, 87-1-606.

87-4-906. Term of license — renewal conditions — changes in operation. (1) A game bird farm license expires on February 28 of the 5th year following issuance. The department shall renew the license on payment of the license fee if the licensee has not violated any provision under which the license was granted and has submitted the reports required by 87-4-912 on forms provided by the department.

(2) The licensee shall notify the department of any proposed changes in the species managed or in the size or location of the enclosure prior to the institution of such change.

History: En. Sec. 25, Ch. 570, L. 1983; amd. Sec. 4, Ch. 49, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 49, L. 2025. Amendment effective July 1, 2025.

87-4-907. License nontransferable. A game bird farm license is nontransferable.

History: En. Sec. 26, Ch. 570, L. 1983.

87-4-908. Inspection. Upon receipt of an application, the department shall inspect the game bird farm facilities and shall thereafter inspect the facilities and the records required to be kept by such farm on a scheduled basis or on such other reasonable basis as may be determined necessary.

History: En. Sec. 27, Ch. 570, L. 1983.

Cross-References

Entry on private land — policy, 87-1-229.

87-4-909. Game farm birds as private property. All birds lawfully raised in a licensed game bird farm are the private property of the licensee, and the licensee may sell or transfer such birds as private property.

History: En. Sec. 28, Ch. 570, L. 1983.

87-4-910. Transportation of birds. Any birds purchased for use on a game bird farm or any birds raised on a game bird farm may be transported only in compliance with Title 81, chapter 2, part 7, and applicable administrative rules.

History: En. Sec. 29, Ch. 570, L. 1983.

87-4-911. Sale of meat. A licensee may sell game farm birds or parts thereof only in compliance with all health laws applicable to the sale of game meat.

History: En. Sec. 30, Ch. 570, L. 1983.

87-4-912. Records and reporting. (1) Each licensee shall keep accurate records of the number and species of birds purchased, transferred, or sold and the name of each person to whom or from whom the birds were purchased, transferred, or sold. These records must be open to inspection by a warden or the director at any reasonable time.

(2) On or before January 31 of each year, each licensee shall file a report with the director, showing the number and species of birds on hand on January 1 and the number and kinds of birds purchased, transferred, or sold during the past year. All records described in this section must be kept for not less than 5 years.

History: En. Sec. 31, Ch. 570, L. 1983; amd. Sec. 5, Ch. 49, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 49, L. 2025. Amendment effective July 1, 2025.

87-4-913. Rulemaking. The department may adopt and enforce only such rules as are necessary to implement the provisions of this part. The rules may address but are not limited to fencing requirements, reporting requirements, the care and maintenance of birds held by game bird farm operators, and licensing requirements for applicants.

History: En. Sec. 32, Ch. 570, L. 1983.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

87-4-914. Release of birds. Game bird farm licensees may release birds into the wild only with the prior approval of the director.

History: En. Sec. 33, Ch. 570, L. 1983.

87-4-915. Repealed. Sec. 7, Ch. 103, L. 2019.

History: En. Sec. 34, Ch. 570, L. 1983; amd. Sec. 2863, Ch. 56, L. 2009; amd. Sec. 115, Ch. 258, L. 2011.

87-4-916. Revocation of license. (1) A game bird farm license may be revoked for failure to operate the game bird farm according to provisions of this part or rules adopted under this part.

(2) Upon discovery of a violation, the department shall give notice of such violation to the licensee, with a statement of a specific time by which the violation must be corrected.

(3) Upon failure of the licensee to correct the violation, the department may institute revocation proceedings. If the department institutes revocation proceedings, it shall provide reasonable notice and opportunity for a hearing to the licensee. After hearing, upon proof of violation, the department may revoke the game bird farm license.

History: En. Sec. 35, Ch. 570, L. 1983.

Cross-References

Contested cases — Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

Part 10
Fur Farms

Part Cross-References

Minimum wages for fur farm employees, 39-3-402, 39-3-404, 39-3-406.
Unemployment insurance coverage — agricultural labor, 39-51-205.
Rabies control — restrictions on possession of certain wild animals, Title 50, ch. 23, part 1.
Fee limitation for multiple licenses, 87-1-606.
Fur dealers, Title 87, ch. 4, part 3.

87-4-1001. Definitions. For purposes of this part, the following definitions apply:

(1) "Fur farm" means the enclosed land area upon which furbearers may be kept for purposes of obtaining, rearing in captivity, keeping, and selling furbearers or parts of furbearers as authorized under this part.

(2) "Furbearer" means a marten or sable, otter, muskrat, fisher, bobcat, lynx, wolverine, or beaver. The term does not include fox or mink.

History: En. Sec. 36, Ch. 570, L. 1983.

87-4-1002. Fur farm license required — applicability. (1) Except as provided in subsection (2), a person may not own, control, or propagate furbearers unless the person holds a current fur farm license from the department.

(2) This part does not apply to the ownership, control, or propagation of furbearers if the ownership, control, or propagation is not for the sale or conveyance of furbearers or parts of furbearers.

(3) A person who violates this section is subject to the penalties provided in 87-6-717.

History: En. Sec. 37, Ch. 570, L. 1983; amd. Sec. 2864, Ch. 56, L. 2009; amd. Sec. 116, Ch. 258, L. 2011.

87-4-1003. Application for license. (1) A person desiring to obtain a fur farm license shall make a written application to the department. The application must specify:

(a) the name of the applicant;
(b) the applicant's address;
(c) the species of furbearers and any plan to propagate them;
(d) the legal description of the lands to be included;
(e) the type of fence that the applicant contemplates erecting;
(f) the source of furbearers.

(2) (a) A fur farm license may be issued only to a responsible applicant who owns or leases the premises on which the operations are to be conducted and who has properly fenced the place where the fur farm is to be located.

(b) Any fur farm owned by a nonresident must have a resident agent who is responsible for the daily operation of the fur farm and who is authorized by the nonresident owner to receive service of process.

(3) Within 30 days of receiving the application, the department shall notify the applicant of its decision to approve or deny the application. If required fencing has not been completed, the department shall approve the application subject to the fencing being completed. If the application is denied, the department shall specify the reasons for denial.

History: En. Sec. 38, Ch. 570, L. 1983; amd. Sec. 2865, Ch. 56, L. 2009.

87-4-1004. *(Temporary)* **License and renewal fee — deposit.** (1) Fur farm license and annual renewal fees must be set by department rule.

(2) The fees must be deposited in the state special revenue fund for the use of the department for purposes of this part.

87-4-1004. *(Effective March 1, 2026)* **License and renewal fee — deposit.** (1) A fur farm license fee is $85. A fur farm operator whose license has been expired for more than 1 year is considered a new applicant and shall submit a new application form with the license fee.

(2) Application for a fur farm license must be made in writing on a form provided by the department.

(3) A fur farm license expires on February 28 of the 5th year following issuance. The department shall renew the license on payment of the license fee if the licensee has not violated any provision under which the license was granted and has submitted the report required by 87-4-1011 on forms provided by the department.

(4) The fees must be deposited in the state special revenue fund for the use of the department for purposes of this part.

History: En. Sec. 39, Ch. 570, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 5, Ch. 50, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 50, L. 2025. Amendment effective March 1, 2026.

Cross-References

Fee limitation for multiple licenses, 87-1-606.

87-4-1005. Term of license — conditions — changes in operation. (1) A fur farm license is valid only for the license year in which it is issued. The licensee shall apply for renewal annually, and the department shall renew the license if the licensee has not violated any provision under which it was granted.

(2) The licensee shall notify the department of any proposed changes in the species managed or in the size or location of the enclosure prior to the institution of such change.

History: En. Sec. 40, Ch. 570, L. 1983.

87-4-1006. License nontransferable. A fur farm license is nontransferable.

History: En. Sec. 41, Ch. 570, L. 1983.

87-4-1007. Inspection. Upon receipt of an application for a license, the department shall inspect each fur farm and thereafter shall inspect each fur farm and the records required to be kept by such fur farm on a scheduled basis or on such other reasonable basis as may be determined necessary.

History: En. Sec. 42, Ch. 570, L. 1983.

Cross-References

Entry on private land — policy, 87-1-229.

87-4-1008. Furbearers as private property. All furbearers lawfully raised on a licensed fur farm are the private property of the licensee, and the licensee may sell or transfer such furbearers as private property.

History: En. Sec. 43, Ch. 570, L. 1983.

Cross-References

Rabies control — restrictions on possession of certain wild animals, Title 50, ch. 23, part 1.
Prohibition of possession of certain wild animals, 50-23-102.
Property rights in wild animals, 70-2-111.

87-4-1009. Transportation of furbearers. Any furbearers purchased for use on a fur farm or any furbearers raised on a fur farm may be transported only in compliance with Title 81, chapter 2, part 7, and applicable administrative rules.

History: En. Sec. 44, Ch. 570, L. 1983.

87-4-1010. Sale of furs. A fur farm owner who desires to sell furs shall comply with all the requirements of part 3 of this chapter.

History: En. Sec. 45, Ch. 570, L. 1983.

87-4-1011. Records and reporting. (1) Each licensee shall keep accurate records of the number and species of furbearers purchased, transferred, or sold and the name of each person to whom or from whom such furbearers were purchased, transferred, or sold.

(2) On or before January 31 of each year, each licensee shall file a report with the director, showing the number and species of furbearers on hand on January 1 and the number and species of furbearers purchased, transferred, or sold during the past year. All records described in this section must be kept for not less than 3 years.

History: En. Sec. 46, Ch. 570, L. 1983.

87-4-1012. Rulemaking. The department may adopt and enforce only such rules as are necessary to implement this part. The rules may address but are not limited to fencing requirements, reporting requirements, the care and maintenance of the furbearers held by fur farm operators, and licensing requirements for applicants.

History: En. Sec. 47, Ch. 570, L. 1983.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

87-4-1013. Revocation of license. (1) A fur farm license may be revoked for failure to operate the fur farm according to the provisions of this part or rules adopted under this part.

(2) Upon discovery of a violation, the department shall give notice of such violation to the licensee, with a statement of a specific time by which the violation must be corrected.

(3) Upon failure of the licensee to correct the violation, the department may institute revocation proceedings. If the department institutes revocation proceedings, it shall provide reasonable notice and opportunity for a hearing to the licensee. After hearing, upon proof of violation, the department may revoke the fur farm license.

History: En. Sec. 48, Ch. 570, L. 1983.

Cross-References

Contested cases — Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

87-4-1014. Repealed. Sec. 120, Ch. 258, L. 2011.

History: En. Sec. 1, Ch. 355, L. 1987.

Part 11
General Provisions

87-4-1101. Transfer of ownership interest in commercial licenses. Unless otherwise specifically provided in this chapter, the sale or transfer of an ownership interest in an incorporated entity that holds a commercial license issued pursuant to this chapter does not constitute a transfer of the license so long as the license remains in the name of the incorporated entity.

History: En. Sec. 24, Ch. 552, L. 2021.

CHAPTER 5
WILDLIFE PROTECTION

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Voluntary checkoff for nongame wildlife programs, 15-30-2387.
Hazardous waste management, Title 75, ch. 10, part 4.
Range for wild game animals reserved in grazing districts, 76-16-107.
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Resource development and reclamation, Title 90, ch. 2.

Part 1
Nongame and Endangered Species

87-5-101. Short title. This part shall be known and may be cited as "The Nongame and Endangered Species Conservation Act".

History: En. Sec. 1, Ch. 461, L. 1973; R.C.M. 1947, 26-1801.

87-5-102. Definitions. As used in this part, the following definitions apply:

(1) "Account" means the nongame wildlife account established in 87-5-121.

(2) "Commercial purposes" means the collection, harvest, possession, or transportation of a species or subspecies of nongame wildlife from the wild with the intent to barter, offer for sale, ship or transport for eventual sale, or sell the animal or any part of the animal.

(3) "Ecosystem" means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life.

(4) "Endangered species" means a species or subspecies of wildlife that is actively threatened with extinction due to any of the following factors:

(a) the destruction, drastic modification, or severe curtailment of its habitat;

(b) its overutilization for scientific, commercial, or sporting purposes;

(c) the effect on it of disease, pollution, or predation;

(d) other natural or artificial factors affecting its prospects of survival or recruitment within the state; or

(e) any combination of the foregoing factors.

(5) "Management" means the collection and application of biological information for the purposes of conserving populations of wildlife consistent with other uses of land and habitat. The term includes the entire range of activities that constitute a modern scientific resource program, including but not limited to research, census, law enforcement, habitat improvement, control, and education. The term also includes the periodic protection of species or populations as well as regulated taking.

(6) "Nongame wildlife" means a wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other wild animal not otherwise legally classified by statute or regulation of this state. Animals designated by statute or regulation of this state as predatory in nature are not classified as nongame wildlife for purposes of this part.

(7) "Person" means an individual, firm, corporation, association, or partnership.

(8) "Take" means to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill wildlife.

(9) "Wildlife" means a wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other wild animal or any part, product, egg, or offspring or the dead body or parts of the animal.

History: En. Sec. 2, Ch. 461, L. 1973; amd. Sec. 12, Ch. 417, L. 1977; R.C.M. 1947, 26-1802(3), (part (4)), (5) thru (10); amd. Sec. 1, Ch. 627, L. 1983; amd. Sec. 1, Ch. 301, L. 2001; amd. Sec. 1, Ch. 521, L. 2001; amd. Sec. 1, Ch. 301, L. 2009.

87-5-103. Legislative intent, findings, and policy. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Nongame and Endangered Species Conservation Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) The legislature finds and declares all of the following:

(a) that it is the policy of this state to manage certain nongame wildlife for human enjoyment, for scientific purposes, and to ensure their perpetuation as members of ecosystems;

(b) that species or subspecies of wildlife indigenous to this state that may be found to be endangered within the state should be protected in order to maintain and, to the extent possible, enhance their numbers;

(c) that the state should assist in the protection of species or subspecies of wildlife that are considered to be endangered elsewhere by prohibiting the taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment within this state of species or subspecies of wildlife unless those actions will assist in preserving or propagating the species or subspecies.

History: En. Sec. 3, Ch. 461, L. 1973; R.C.M. 1947, 26-1803; amd. Sec. 36, Ch. 361, L. 2003.

87-5-104. Investigations by department. The department shall conduct investigations on nongame wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. The department shall conduct ongoing investigations of nongame wildlife.

History: En. Sec. 4, Ch. 461, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1804(part).

87-5-105. Regulations to manage nongame wildlife. (1) On the basis of the determinations made pursuant to 87-5-104, the department shall issue management regulations. The regulations must set forth species or subspecies of nongame wildlife that the department considers to be in need of management pursuant to 87-5-104 through 87-5-106, giving their common and scientific names by species and subspecies.

(2) The department shall by regulation establish limitations relating to taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment considered necessary to manage nongame wildlife that is designated in need of management.

History: En. Sec. 4, Ch. 461, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1804(part); amd. Sec. 7, Ch. 316, L. 2001.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

87-5-106. Unlawful acts. Except as provided in regulations issued by the department, it shall be unlawful for any person to take, possess, transport, export, sell, or offer for sale nongame wildlife deemed by the department to be in need of management. Subject to the same exception, it shall further be unlawful for any common or contract carrier knowingly to transport or receive for shipment nongame wildlife deemed by the department to be in need of management.

History: En. Sec. 4, Ch. 461, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1804(3).

87-5-107. List of endangered species. (1) (a) On the basis of investigations on nongame wildlife provided for in 87-5-104 and other available scientific and commercial data and after consultation with other state wildlife agencies, appropriate federal agencies, and other interested persons and organizations, the department shall recommend to the legislature a list of those species and subspecies of wildlife indigenous to the state that are determined to be endangered within this state, giving their common and scientific names by species and subspecies.

(b) The department may propose legislation to specifically include any species or subspecies of fish and wildlife appearing on the United States' list of endangered native fish and wildlife (part 17 of Title 50 of the Code of Federal Regulations, appendix D) as it appears on July 1, 1973, as well as any species or subspecies of fish and wildlife appearing on the United States' list of endangered foreign fish and wildlife (part 17 of Title 50 of the Code of Federal Regulations, appendix A), as that list may be modified.

(2) (a) The department shall conduct a review of the state list of endangered species every 2 years. The department may propose specific legislation to amend the list by additions that are considered appropriate and at times that are considered appropriate.

(b) Whenever a species or subspecies is removed from the United States' list of endangered native fish and wildlife (part 17 of Title 50 of the Code of Federal Regulations, appendix D) and that species or subspecies is also on the state list of endangered species in ARM 12.5.201, the department shall amend the state list to remove that species or subspecies. The removal of a species or subspecies from the state list pursuant to this subsection (2)(b) does not require approval by the legislature.

(3) Except as otherwise provided in this part, it is unlawful for any person to take, possess, transport, export, sell, or offer for sale and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on any of the following lists:

(a) the list of wildlife indigenous to the state determined to be endangered within the state pursuant to subsection (1);

(b) any species or subspecies of fish and wildlife included by the department and appearing on the United States' list of endangered native fish and wildlife (part 17 of Title 50, Code of Federal Regulations, appendix D) as it appears on July 1, 1973; and the United States' list of endangered foreign fish and wildlife (part 17 of Title 50, Code of Federal Regulations, appendix A), as that list may be modified.

(4) Any species or subspecies of fish and wildlife appearing on any of the enumerated lists that is brought into the state from another state or from a point outside the territorial limits of the United States and that is transported across the state destined for a point beyond the state may be brought into the state and transported without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(5) If the United States' list of endangered native fish and wildlife is modified by additions, the modifications, whether or not involving species or subspecies indigenous to the state, may be accepted as binding under subsections (3) and (4) if, after the type of scientific determination described in subsection (1), the department proposes and the legislature accepts the modification for the state.

History: Ap. p. Sec. 5, Ch. 461, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-1805, R.C.M. 1947; Ap. p. Sec. 2, Ch. 461, L. 1973; amd. Sec. 12, Ch. 417, L. 1977; Sec. 26-1802, R.C.M. 1947; R.C.M. 1947, 26-1802(part (4)), 26-1805; amd. Sec. 1, Ch. 240, L. 1987; amd. Sec. 1, Ch. 46, L. 2005.

Cross-References

Possession, transportation, exportation, processing, sale or offer for sale, or shipment of endangered species generally prohibited, 87-5-112.

87-5-108. Establishment of programs. (1) The director shall establish programs, including acquisition of land or aquatic habitat, that are considered necessary for management of nongame and endangered wildlife. The department shall establish policies that are necessary to carry out the purpose of 87-5-109 and this section.

(2) In carrying out programs authorized by this section, the department may enter into agreements with federal agencies, political subdivisions of the state, or with private persons for administration and management of any area established under 87-5-109 and this section or used for management of nongame or endangered wildlife.

(3) The governor shall review other programs administered by the governor and, to the extent practicable, use those programs in furtherance of the purposes of 87-5-109 and this section. The governor shall also encourage other state and federal agencies to use their authorities in furtherance of the purposes of 87-5-109 and this section.

History: En. Sec. 6, Ch. 461, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1806(1) thru (3); amd. Sec. 2866, Ch. 56, L. 2009.

Cross-References

Cooperative agreements for research, training, and other projects, 87-1-210.

87-5-109. Taking of species for educational, scientific, or other purposes. (1) The director may permit the taking, possession, transportation, exportation, or shipment of species or subspecies of wildlife which appear on the state list of endangered species, on the United States' list of endangered native fish and wildlife, as amended and accepted in accordance with 87-5-107(5), or on the United States' list of endangered foreign fish and wildlife, as such list may be modified hereafter, for scientific, zoological, or educational purposes, for propagation in captivity of such wildlife, or for other special purposes.

(2) Upon good cause shown and where necessary to alleviate damage to property or to protect human health, endangered species may be removed, captured, or destroyed but only pursuant to permit issued by the director and, where possible, by or under the supervision of an agent of the department. Endangered species may be removed, captured, or destroyed without permit by any person in emergency situations involving an immediate threat to human life. Provisions for removal, capture, or destruction of nongame wildlife for the purposes set forth above shall be set forth in regulations issued by the department pursuant to 87-5-105.

History: En. Sec. 6, Ch. 461, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1806(4), (5); amd. Sec. 153, Ch. 370, L. 1987.

Cross-References

Taking fish or game for scientific purposes, 87-2-806.

Possession, transportation, exportation, processing, sale or offer for sale, or shipment of endangered species generally prohibited, 87-5-112.

Scientific permits on game preserves, 87-5-401.

87-5-110. Department to issue regulations. The department shall issue such regulations as are necessary to carry out the purposes of this part.

History: En. Sec. 7, Ch. 461, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1807.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

87-5-111. Enforcement and penalty. (1) Any person who violates the provisions of this part or whoever fails to procure or violates the terms of any permit issued thereunder shall be guilty of a misdemeanor.

(2) Upon a first conviction for a violation under this part, the court may fine the defendant not to exceed $250. Upon a second such conviction, the defendant may be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 30 days, or both. Upon subsequent such convictions, the defendant shall be fined not less than $500 or more than $1,000 and in addition may be imprisoned in the county jail for any term not to exceed 6 months.

(3) Any officer employed and authorized by the director or any peace officer of the state or of any municipality or county within the state shall have authority to enforce the provisions of this part.

(4) Wildlife seized under the provisions of this part shall be held by an officer or agent of the department pending disposition of court proceedings and thereafter be forfeited to the state for disposition as the director may deem appropriate. Prior to forfeiture, the director may direct the transfer of wildlife so seized to a qualified zoological, educational, or scientific institution for safekeeping. The department is authorized to issue regulations to implement this subsection.

History: En. Sec. 8, Ch. 461, L. 1973; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1808.

87-5-112. Construction. This part may not be construed to apply retroactively or to prohibit importation into the state of wildlife that are lawfully imported into the United States or lawfully taken or removed from another state or to prohibit entry into the state or possession, transportation, exportation, processing, sale or offer for sale, or shipment of any wildlife whose species or subspecies is determined to be threatened with statewide extinction in this state but not in the state where originally taken, if the person engaging therein demonstrates by substantial evidence that the wildlife was lawfully taken or removed from the state. However, this section may not be construed to permit the possession, transportation, exportation, processing, sale or offer for sale, or shipment within this state of wildlife on the United States' list of endangered native fish and wildlife, as amended and accepted in accordance with 87-5-107(5), except as permitted in the provision by 87-5-107(3) and (4) and 87-5-109(1).

History: En. Sec. 9, Ch. 461, L. 1973; R.C.M. 1947, 26-1809(1); amd. Sec. 307, Ch. 42, L. 1997.

Cross-References

Importation of game animals, Title 81, ch. 2, part 7.

87-5-113 through 87-5-115 reserved.

87-5-116. Limited taking of certain nongame wildlife for commercial purposes — exceptions. (1) The following nongame wildlife may not be taken for commercial purposes, except as provided in subsections (3) and (4), without prior authorization of the department, subject to regulations adopted by the department:

(a) northern flying squirrel (Glaucomys sabrinus);

(b) pika (Ochotona princeps);

(c) pygmy rabbit (Brachylagus idahoensis);

(d) amphibians native to the state of Montana; and

(e) reptiles native to the state of Montana.

(2) The department may regulate the taking of nongame wildlife for commercial purposes. Regulations may establish limitations related to the taking, possession, transportation, exportation, processing, sale or offer for sale, and shipment of nongame wildlife that are considered necessary to manage nongame wildlife.

(3) The harvest of the prairie rattlesnake (Crotalus viridis) for commercial purposes may not be regulated under this section.

(4) This section does not prohibit:

(a) outfitting for the shooting of nongame wildlife;

(b) payment by a landowner to an individual for shooting or removing nongame wildlife; or

(c) the use of byproducts of nongame wildlife in fishing flies, jewelry, or other handicrafts.

History: En. Sec. 2, Ch. 301, L. 2001.

87-5-117 through 87-5-120 reserved.

87-5-121. Nongame wildlife account. (1) There is a nongame wildlife account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited into the account:

(a) all money collected under 15-30-2387 and all interest earned by the fund before being expended under this section; and

(b) money from marijuana taxes deposited under 16-12-111.

(3) Money in the account must be used by the department, upon the approval of the commission as determined under 87-5-122, to provide adequate funding for:

(a) research and education programs on nongame wildlife in Montana, as provided for in 87-5-104; and

(b) any management programs for nongame wildlife approved by the legislature under 87-5-105 as species or subspecies in need of management.

(4) The money is available to the department in the same manner as provided in 87-1-601, except that money collected under 15-30-2387 may not be used:

(a) for the purchase of any real property; or

(b) in such a way as to interfere with the production on or management of private property.

History: En. Sec. 2, Ch. 627, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 2, Ch. 436, L. 1985; amd. Sec. 1, Ch. 589, L. 1987; amd. Sec. 61, Ch. 16, L. 1991; amd. Sec. 53, I.M. No. 190, approved Nov. 3, 2020.

87-5-122. Duties of commission. (1) The commission shall review and approve annually the nongame wildlife programs projects recommended by the department for funding from the nongame wildlife account. The commission shall provide for public comment during the review and approval process.

(2) The commission may adopt rules governing:

(a) the use of the nongame wildlife account set forth in 87-5-121; and

(b) the review and approval process set forth in subsection (1).

History: En. Sec. 4, Ch. 627, L. 1983.

87-5-123 through 87-5-130 reserved.

History: En. Sec. 5, Ch. 627, L. 1983; amd. Sec. 2, Ch. 589, L. 1987; amd. Sec. 61, Ch. 112, L. 1991.

87-5-131. Process for delisting of gray wolf — management following delisting. (1) If the United States fish and wildlife service removes the Northern Rocky Mountain or gray wolf from the United States' list of endangered or threatened wildlife, the department is authorized to remove the wolf from the state list of endangered species on a determination by the department pursuant to this part that the wolf is no longer endangered.

(2) Following state delisting of the wolf, the department shall manage the wolf as a species in need of management.

(3) (a) Following state delisting of the wolf, the department, or the department of livestock, pursuant to 81-7-102 and 81-7-103, may control wolves for the protection and safeguarding of livestock if the control action is consistent with a wolf management plan approved by both the department and the department of livestock.

(b) Any wolf management plan approved by the department and the department of livestock must allow the issuance of special kill permits, also known as shoot-on-sight written take authorizations, by the department to landowners or public land permittees who have experienced livestock depredation.

History: En. Sec. 8, Ch. 316, L. 2001; amd. Sec. 2, Ch. 275, L. 2009; amd. Sec. 14, Ch. 552, L. 2021; amd. Sec. 1, Ch. 459, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 459, L. 2025. Amendment effective October 1, 2025.

87-5-132. Use of radio-tracking collars for monitoring wolf packs. (1) As part of a wolf management plan approved by the department, a radio-tracking collar or a collar that uses global positioning system technology must be attached to at least one wolf in each wolf pack that is active near livestock or near a population center in areas where depredations are chronic or likely.

(2) The department may expend any state and federal funds received for wolf management purposes and the portion of money allocated from the wolf management account established in 87-1-623 to fulfill the requirements of this section.

(3) The department shall collaborate and cooperate and may enter into agreements with other state and federal agencies, including the United States department of agriculture wildlife services, to fulfill the requirements of this section.

History: En. Sec. 1, Ch. 578, L. 2005; amd. Sec. 4, Ch. 390, L. 2011; amd. Sec. 1, Ch. 400, L. 2011.

Part 2
Wild Birds — Regulation of Raptors

87-5-201. Protection of wild birds and their nests and eggs. (1) It is unlawful for a person to hunt, capture, kill, possess, purchase, offer or expose for sale, ship, or transport any wild bird, other than a game bird, or any part of the plumage, skin, or body of the bird, irrespective of whether the bird was captured or killed within the state, or to take or destroy the nest or eggs of a wild bird, except under a certificate, falconer's license, or permit issued by the director.

(2) This section does not apply to:

(a) the hunting, trapping, or killing of house sparrows, crows, starlings, rock doves, blackbirds, magpies, and other birds the department designates or to the taking or destruction of their nests and eggs;

(b) the possession or transportation of parts or plumage of eagles used for religious purposes by a member of an Indian tribe when possessed or transported as permitted by 16 U.S.C. 668a.

History: En. Sec. 41, Ch. 173, L. 1917; re-en. Sec. 3723, R.C.M. 1921; amd. Sec. 18, Ch. 77, L. 1923; amd. Sec. 20, Ch. 59, L. 1927; re-en. Sec. 3723, R.C.M. 1935; amd. Sec. 16, Ch. 224, L. 1947; amd. Sec. 2, Ch. 309, L. 1971; amd. Sec. 33, Ch. 511, L. 1973; amd. Sec. 38, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501; amd. Sec. 1, Ch. 301, L. 1983.

Cross-References

Unlawful to buy, sell, possess, or transport game birds, 87-4-705.

Destruction of eagles or predatory hawks and owls, 87-5-209.

Protection of birds in game preserves and closed areas, Title 87, ch. 5, part 4.

License required to hunt or trap game birds, 87-6-301.

87-5-202. Definition of raptors. "Raptors", when used in this part, means all birds of the orders falconiformes and strigiformes, commonly called falcons, hawks, eagles, ospreys, and owls.

History: En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(1).

87-5-203. Regulation of raptors. A person may not at any time hunt, capture, kill, possess, purchase, offer or expose for sale, or transport a raptor except as provided in this part.

History: En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(2).

87-5-204. License and rules for falconry and raptors. (1) The commission shall adopt specific rules for the keeping of records and for the trapping, taking, possession by residents and nonresidents, selling or transfer of possession, or training of raptors used in the practice of falconry and may authorize the issuance of licenses to persons for the practice of falconry and set license qualifications and fees. Rules adopted under this section are intended to conform to standards and regulations adopted under federal law by being at least as restrictive.

(2) Licensees must have in possession a valid falconer's license when engaged in the practice of falconry. In addition, falconers loosing raptors at game birds must have in possession a valid resident or nonresident upland game bird license or waterfowl stamp, as appropriate.

(3) Falconry licenses or permits are not transferable and may be revoked for due cause at any time by the department.

History: En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(3), (5), (6), (13), (14); amd. Sec. 1, Ch. 297, L. 1983; amd. Sec. 4, Ch. 105, L. 1987; amd. Sec. 1, Ch. 243, L. 1991; amd. Sec. 117, Ch. 258, L. 2011.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.
Discrimination in license issuance prohibited, 49-3-204.
Powers of Fish and Wildlife Commission, 87-1-301.

87-5-205. Restrictions on species allowed for falconry. (1) Bald eagles, any raptors listed pursuant to 50 CFR, part 17, and any species that has been listed pursuant to 87-5-107 may not be captured in this state for the sport of falconry.

(2) Species of raptors that are native to North America may be brought into Montana for the purpose of falconry unless that action is specifically prohibited by this part, the laws of other states, or the rules of the federal government. Those raptors may be possessed, subject to this part. A person bringing a raptor into this state must be able to show proof of the area of origin.

History: En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(4), (7); amd. Sec. 1, Ch. 422, L. 1987; amd. Sec. 1, Ch. 383, L. 1999.

Cross-References

Importation permits and health certificates, Title 81, ch. 2, part 7.

87-5-206. Repealed. Sec. 4, Ch. 243, L. 1991.

History: En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(8), (9), (12), (15); amd. Sec. 2, Ch. 297, L. 1983; amd. Sec. 1, Ch. 532, L. 1987.

87-5-207. Restrictions on use of raptors. (1) Raptors may not be used to intentionally flush or harass big game.

(2) Raptors may not be loosed intentionally at protected mammals and birds. Game bird limits and all seasons and other rules relating to game birds must be obeyed.

History: En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(10), (11).

87-5-208. Nonresidents allowed raptors in state — capture. (1) A nonresident who possesses a valid federal falconry license may practice falconry in the state of Montana with legally acquired and permitted raptors. A nonresident is allowed to hunt with falcons in the state of Montana subject to all Montana laws and rules.

(2) Nonresidents may capture raptors in Montana for falconry or captive breeding purposes pursuant to rules adopted under 87-5-204.

(3) A resident of a state that does not allow Montana residents to trap raptors in that state may not obtain a trapping permit in Montana.

History: **En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(16); amd. Sec. 3, Ch. 243, L. 1991; amd. Sec. 1, Ch. 118, L. 2011.**

87-5-209. Destruction of eagles or predatory hawks and owls. Predatory hawks and owls destroying livestock or poultry may be killed at any time by the livestock or poultry owners. Eagles may be killed in compliance with federal law and regulation.

History: **En. Sec. 3, Ch. 309, L. 1971; amd. Sec. 34, Ch. 511, L. 1973; amd. Sec. 1, Ch. 34, L. 1974; amd. Sec. 39, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-501.1(17).**

87-5-210. Captive breeding of raptors — permit — transfer and revocation — rules. (1) The department may grant permits to a person, whether or not licensed under this part, for the taking and holding of raptors for captive breeding purposes under such conditions, consistent with this part and with rules adopted by the commission, as the department may specify in the permit. The commission may set permit qualifications and fees by rule.

(2) Captive breeding permits are not transferable and may be revoked at any time by the department for violation of any conditions of the permit or regulations of the commission.

(3) The commission shall adopt rules regarding raptors taken and held for captive breeding projects. Rules adopted under this section are intended to conform to standards and regulations adopted under federal law by being at least as restrictive.

History: **En. Secs. 3, 4, 5, Ch. 297, L. 1983; amd. Sec. 2, Ch. 532, L. 1987; amd. Sec. 2, Ch. 243, L. 1991.**

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Part 3
Grizzly Bear

Part Cross-References

Grizzly as state animal, 1-1-508.

87-5-301. Grizzly bear — findings — policy. (1) The legislature finds that:

(a) grizzly bears are a recovered population and thrive under responsive cooperative management;

(b) grizzly bear conservation is best served under state management and the local, state, tribal, and federal partnerships that fostered recovery; and

(c) successful conflict management is key to maintaining public support for conservation of the grizzly bear.

(2) It is the policy of the state to:

(a) manage the grizzly bear as a species in need of management to minimize conflicts with humans and livestock;

(b) on the delisting of grizzly bears from the federal Endangered Species Act, 16 U.S.C. 1531, et seq., manage grizzly bear populations at levels necessary to maintain delisted status to include management of mortalities from all sources, including take by livestock owners or other authorized persons under subsections (3) and (4) and the loss of bears by translocation out of the populations; and

(c) subject to the provisions of subsections (3) and (4), use proactive management to manage grizzly bear distribution and prevent conflicts, including nonlethal and preventative measures as well as trapping and lethal measures.

(3) Prior to delisting, the commission shall adopt rules to allow a livestock owner or other authorized person to take a grizzly bear at any time without a permit or license from the department when a grizzly bear is attacking or killing livestock. A livestock owner or other authorized person may take all nonlethal steps the livestock owner or authorized person considers necessary to protect the livestock owner's property. The rules adopted by the commission must:

(a) be consistent with the most recent state of Montana grizzly bear management plan, conservation strategies, including mortality thresholds, and the adaptive management principles of the commission and the department for the grizzly bear population;

(b) require a livestock owner or other authorized person who takes a grizzly bear pursuant to this subsection (3) to promptly report the taking of the grizzly bear to the department within 24 hours and to preserve the carcass of the grizzly bear;

(c) establish a quota each year for the total number of grizzly bears that may be taken pursuant to subsection (3) subject to mortality thresholds; and

(d) allow the commission to adjust quotas for the taking of grizzly bears pursuant to subsection (3) before a quota is reached if the commission determines the circumstances require adjustment of the total number of grizzly bears taken.

(4) On delisting, when a grizzly bear is threatening livestock, the livestock owner may make a complaint to the department director. The director or the director's designee shall investigate the complaint, and if it appears it is well-founded, the director or director's designee may:

(a) with permission from the livestock owner or other authorized person, send a department employee to the property to control, trap, or remove the grizzly bear or assist the livestock owner or other authorized person in removing any attractants or removing any other materials attracting grizzly bears to the property; or

(b) subject to the quota established by the commission in subsection (3)(c), issue a permit to the livestock owner or other authorized person to kill the grizzly bear. Any grizzly bear killed pursuant to a permit issued by the department as provided in this subsection (4)(b) must be reported to the department within 24 hours.

(5) (a) Except as provided in subsection (5)(b), the department may not relocate a grizzly bear listed under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., except to a release site previously approved by the commission for relocation of grizzly bears.

(b) The department may respond to a grizzly bear listed under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., that is causing conflict outside of a federal recovery zone. If the bear is to be relocated, the department may not relocate the bear.

(c) To the greatest extent possible, the department and the commission shall prioritize genetic exchange between ecosystems when capturing and translocating a grizzly bear.

(6) As used in this section, "livestock" means cattle, swine, horses, mules, sheep, goats, llamas, donkeys, and livestock guard dogs.

History: En. Sec. 1, Ch. 134, L. 1969; R.C.M. 1947, 26-307.2; amd. Sec. 3, Ch. 292, L. 2011; amd. Sec. 1, Ch. 416, L. 2011; amd. Sec. 1, Ch. 338, L. 2021; amd. Sec. 1, Ch. 670, L. 2023.

87-5-302. Commission regulations on grizzly bears. (1) The commission may:

(a) pursuant to subsection (2), regulate the hunting of grizzly bears, including the establishment of tagging requirements for carcasses, skulls, and hides; and

(b) establish requirements for the transportation, exportation, and importation of grizzly bears.

(2) When special grizzly bear licenses are to be issued pursuant to 87-2-701, the commission shall establish hunting season quotas for grizzly bears that will prevent the population of grizzly bears from decreasing below sustainable levels and with the intent to meet population objectives for elk, deer, and antelope. The provisions of this subsection do not affect the restriction provided in 87-2-702(3) that limits a person to the taking of only one grizzly bear in Montana.

History: En. Sec. 2, Ch. 134, L. 1969; R.C.M. 1947, 26-307.3; amd. Sec. 4, Ch. 292, L. 2011.

Cross-References

Importation permits and health certificates, Title 81, ch. 2, part 7.
Department authorized to make rules relative to tagging, possession, or transportation of bear, 87-1-201.
Fixing of seasons and bag and possession limits, 87-1-304.

87-5-303. Repealed. Sec. 5, Ch. 568, L. 1985.

History: En. Sec. 4, Ch. 167, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-301.1.

Part 4
Game Preserves and Closed Areas

Part Cross-References

Establishment of state scientific and recreational park to protect biological station grounds, Title 23, ch. 1, part 2.
State forest lands — deferral of management prohibited, 77-5-116.
Commission empowered to establish and close fish and game refuges, 87-1-305.
Acquisition of land by United States for migratory bird reservation, 87-1-705.
Regulation of bird reserve in Flathead County, 87-1-706.
Water supply for Benton Lake Wildlife Refuge, 87-1-707.
Federal waterfowl and wildlife area acquisitions — hearings, 87-1-713, 87-1-714.
Taking fish or game for scientific purposes, 87-2-806, 87-5-109.
Taking migratory game birds for propagation — avicultural permit, 87-2-807.
Protection of wild birds and their nests and eggs, 87-5-201.

87-5-401. Creation of game preserves and general provisions. (1) There are game preserves within the state for the better protection of all the game animals and birds within their limits. Except as otherwise provided in this part, no person may, within the limits of a game preserve created by the legislature or by the commission, hunt for, trap, capture, kill, or take game animals, fur-bearing animals, or birds of any kind. Within the limits of a preserve, a person may not carry or discharge firearms, create any unusual disturbance tending to frighten or drive away any of the game animals or birds, or chase them with dogs. The commission may declare any preserve open to the trapping of fur-bearing animals during the regular open season.

(2) Permits to capture animals or birds for the purpose of propagation or for scientific purposes, to trap fur-bearing animals, to destroy mountain lions, wolves, foxes, coyotes, wildcats, lynx, or other predatory animals or birds, or to carry firearms may be issued by the director upon the payment of the fee and in accordance with rules established for the preserve by the commission.

History: En. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3761, R.C.M. 1921; re-en. Sec. 3761, R.C.M. 1935; amd. Sec. 28, Ch. 224, L. 1947; amd. Sec. 1, Ch. 31, L. 1949; amd. Sec. 44, Ch. 511, L. 1973; amd. Sec. 50, Ch. 9, L. 1977; R.C.M. 1947, 26-1101; amd. Sec. 1, Ch. 18, L. 1981.

87-5-402. Posting of notice and additional provisions. (1) Preserves, refuges, sanctuaries, rest grounds, or closed districts created by the department and any land or water areas or portions of preserves, refuges, sanctuaries, rest grounds, or closed districts closed by the department must be conspicuously posted for a period of 20 days, with posters setting forth their purposes and the penalties for violating the orders, rules, and regulations of the department applicable to them. Not less than 20 days before creation of any fish and game district, preserve, refuge, sanctuary, rest ground, or closed district or closure of land or water areas, publication must be made of the boundaries of the fish and game district, preserve, refuge, sanctuary, rest ground, or closed district, with boundaries accurately designated by definite topographic monuments or public land survey. Publication must be in a newspaper having general circulation in the locality of the fish and game district, preserve, refuge, sanctuary, rest ground, or closed district.

(2) The hunting, pursuing, capturing, killing, or taking of any fish, game animals, game birds, or fur-bearing animals in violation of the orders, rules, or regulations of the department governing any closed season, fish and game district, preserve, refuge, sanctuary, rest ground, or closed land or water area promulgated by the department is punishable by the penalties provided for the violation of laws regarding closed seasons.

(3) All game preserves or refuges created are continued in full effect until they are changed by the department in the manner designated in this section. The department has the right, power, and authority, when properly petitioned, to alter and change the boundaries of or entirely do away with and abandon any preserve or refuge, except the Sun River game preserve, when, in the opinion of the department, it is in the best interest to do so.

History: En. Sec. 27, Ch. 193, L. 1921; re-en. Sec. 3676, R.C.M. 1921; amd. Sec. 1, Ch. 87, L. 1933; re-en. Sec. 3676, R.C.M. 1935; amd. Sec. 1, Ch. 145, L. 1937; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-127; amd. Sec. 2, Ch. 16, L. 2007.

Cross-References

Definition of enter or remain unlawfully, 45-6-201.

87-5-403. Sun River game preserve. There is a Sun River game preserve described as follows: beginning at a point on the continental divide of the Rocky Mountains, due south of the head or source of the south fork of the north fork of Sun River, in what will be, when surveyed, section 8, township 18 north of range 10 west, Montana meridian; thence due north from the crest of the continental divide to the head of the south fork of the north fork of Sun River; thence northerly along and down the course of the south fork of the north fork of Sun River as it winds and turns to its confluence with the north fork of the north fork of Sun River; thence northerly along the course of the north fork of the north fork of Sun River as it winds and turns to its head or source; thence due north to the crest of the continental divide of the Rocky Mountains; thence along the crest of the continental divide of the Rocky Mountains southwesterly and southerly to the place of beginning, intending hereby to include in said game preserve all that territory lying between the south fork of the north fork and the north fork of the north fork of Sun River on the east and the continental divide of the Rocky Mountains on the west.

History: **En. Sec. 1, Ch. 34, L. 1913; re-en. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3763, R.C.M. 1921; re-en. Sec. 3763, R.C.M. 1935; amd. Sec. 26, Ch. 9, L. 1977; R.C.M. 1947, 26-1102.**

87-5-404. Flathead Lake bird preserve — university of Montana-Missoula biological reserve. (1) Those islands, two in number, including lot one of block one, containing two and fifty-seven hundredths acres; lot two of block one, containing two and sixty hundredths acres; lot one of block two, containing one and sixty-five hundredths acres, all being in the villa site of islands situated in Flathead Lake in the county of Flathead, Montana, according to the official plat and survey of the land returned to the general land office by the surveyor general, are a perpetual place of refuge for birds of all kinds, and those lands are to be called the "Flathead Lake bird preserve". The lands are reserved for the breeding, propagating, and protection of all species of birds.

(2) It is unlawful for any person to hunt, as defined in 87-2-101, or destroy or in any way injure any bird on the islands or to interfere with their eggs or nests or to hunt any bird within a distance of 400 yards from the shoreline of the islands.

(3) It is unlawful for any person to hunt, as defined in 87-2-101, or destroy or in any way injure any bird or animal on the university of Montana-Missoula biological reserve located on the east shore of Flathead Lake or to interfere with their eggs or their young or their nests or to hunt any bird or any animal within 400 yards of the university of Montana-Missoula biological reserve or to discharge any firearms on the reserve or within 400 yards of the reserve.

History: **En. Sec. 83, Ch. 173, L. 1917; re-en. Sec. 3768, R.C.M. 1921; re-en. Sec. 3768, R.C.M. 1935; R.C.M. 1947, 26-1107; amd. Sec. 35, Ch. 417, L. 1995; amd. sec. 36, Ch. 308, L. 1995.**

Cross-References

Regulation of bird reserve in Flathead County, 87-1-706.

87-5-405. Repealed. Sec. 1, Ch. 419, L. 2005.

History: **En. Sec. 1, Ch. 33, L. 1923; re-en. Sec. 3776.3, R.C.M. 1935; R.C.M. 1947, 26-1116; amd. Sec. 2, Ch. 18, L. 1981.**

87-5-406. Gates of the Mountains game preserve. (1) Beginning in section 2, township 12 north, range 3 west, at the southeast corner of upper Holter Lake and proceeding westerly along the northern shoreline of upper Holter Lake in the Gates of the Mountains area located in Lewis and Clark County, Montana, and then northerly along Stoney Point Beacon road, then northerly along the powerline to the beacon, then along the bulldozer road to the point of the ridge in section 23, township 13 north, range 3 west, then northerly to the Missouri River, then easterly across the river and lake to the forest service boundary to the wilderness boundary, then south following the wilderness boundary to the southeast corner of section 1, township 12 north, range 3 west, then west back to the upper Holter Lake to the point of beginning, intending to include in the game preserve all that territory adjacent to the Gates of the Mountains area, is called the Gates of the Mountains game preserve.

(2) It is unlawful for any person to hunt, as defined in 87-2-101, or destroy or in any way injure any bird or fur-bearing animal in the area or to interfere with their eggs or nests or to hunt any bird or fur-bearing animal within the preserve. The area is closed to all hunting at all times.

History: **En. Sec. 1, Ch. 115, L. 1971; R.C.M. 1947, 26-1128; amd. Sec. 36, Ch. 417, L. 1995.**

Part 5
Stream Protection

Part Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.
Smith River Management Act, Title 23, ch. 2, part 4.
Streambed protection, Title 75, ch. 7, part 1.
Water rights, Title 85, ch. 2, part 2.
River restoration program, 87-1-257 through 87-1-259.
Future fisheries improvement program, 87-1-272, 87-1-273.

87-5-501. State policy. It is hereby declared to be the policy of the state of Montana that its fish and wildlife resources and particularly the fishing waters within the state are to be protected and preserved to the end that they be available for all time, without change, in their natural existing state except as may be necessary and appropriate after due consideration of all factors involved.

History: **En. Sec. 1, Ch. 10, L. 1965; R.C.M. 1947, 26-1501.**

87-5-502. Notice of construction or hydraulic projects. An agency of state government, county, municipality, or other subdivision of the state of Montana, hereafter called applicant, shall not construct, modify, operate, maintain, or fail to maintain any construction project or hydraulic project which may or will obstruct, damage, diminish, destroy, change, modify, or vary the natural existing shape and form of any stream or its banks or tributaries by any type or form of construction without first causing notice of such planned construction to be served upon the department on forms furnished by the department as soon as preliminary plans are completed but not less than 60 days prior to commencement of final plans for construction. Such notice shall include detailed plans and specifications of so much of said project as may or will affect any such stream in any manner specified above.

History: **En. Sec. 2, Ch. 10, L. 1965; amd. Sec. 1, Ch. 133, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1502.**

Cross-References

"Person" subject to The Natural Streambed and Land Preservation Act of 1975 not covered under this section, 75-7-103.

87-5-503. Investigation of construction plans. The department shall promptly examine and investigate all such plans. Should the department determine the plans and specifications furnished with any such application technically insufficient, the department shall so notify the applicant and may render aid in preparing adequate plans and specifications.

History: **En. Sec. 3, Ch. 10, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1503.**

87-5-504. Notice of department findings and alternative plans. Within 30 days after the receipt of such plans, the department shall notify the applicant whether or not such construction project or hydraulic project will adversely affect any fish or game habitat. If the department notifies the applicant that such construction will adversely affect any fish or game habitat, it shall accompany such notice with recommendations or alternative plans which will eliminate or diminish such adverse effect.

History: **En. Sec. 4, Ch. 10, L. 1965; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1504.**

87-5-505. Arbitration of disputes. (1) If the department notifies the applicant that the construction will adversely affect fish or game habitat, the applicant, within 15 days after receiving the recommendations and alternatives of the department, shall notify the department if it refuses to modify its plans in accordance with the recommendations or alternatives. In the event of refusal, the disagreement shall be arbitrated as provided in subsection (2) of this section.

(2) (a) Upon receipt of a notice of refusal, the department shall determine if it wants the disagreement arbitrated. Within 10 days after an affirmative determination and after notice to the applicant, the department shall notify, in writing, all district judges of the judicial district or districts in which the project is located that an arbitration board is needed. Within 5 days of receipt of notification, the judges shall appoint three people from the county or counties in which the project is located to an arbitration committee. Within 10 days after the committee is appointed, it shall meet, hear testimony from all the parties concerned, and issue a decision signed by at least two members of the committee. The decision shall be binding on all parties concerned.

(b) Travel expenses of the arbitrators shall be allowed as in 2-18-501 through 2-18-503, as amended, and shall be divided equally among the agencies involved.

History: **En. Sec. 5, Ch. 10, L. 1965; amd. Sec. 2, Ch. 133, L. 1971; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 5, Ch. 453, L. 1977; R.C.M. 1947, 26-1505.**

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

87-5-506. Vested water rights preserved and emergency actions excepted. This part shall not operate or be so construed as to impair, diminish, divest, or control any existing or vested water rights under the laws of the state of Montana or the United States or operate in emergencies such as floods, ice jams, or other conditions causing emergency handling.

History: **En. Sec. 6, Ch. 10, L. 1965; R.C.M. 1947, 26-1506.**

87-5-507. Irrigation projects excepted. This part shall not apply to any irrigation district project or any other irrigation system.

History: **En. Sec. 7, Ch. 10, L. 1965; amd. Sec. 3, Ch. 133, L. 1971; R.C.M. 1947, 26-1507.**

87-5-508. Federal actions injuring fish and wildlife. The department shall observe acts and omissions on the part of the government of the United States and its agencies within the state of Montana which do, will, or might affect adversely the fish and wildlife resources, including but not limited to the fishing streams within the state, and upon receiving such information, the department shall without delay send formal notification in writing, by certified mail, to the appropriate federal agency or agencies involved, setting forth in detail the appropriate objections of the state of Montana to the acts and omissions aforesaid. The department shall keep complete files and records, available for public inspection, of all matters and things done and all communications and correspondence sent and received pursuant to this section.

History: En. Sec. 4, Ch. 133, L. 1971; amd. Sec. 11, Ch. 417, L. 1977; R.C.M. 1947, 26-1508.

87-5-509. Penalty and restoration. (1) An agency, under 87-5-502, violating provisions of this part shall be assessed a fine of not less than $100 or more than $500 for each day of continuing violation but not more than a total of $1,000.

(2) In addition, at the discretion of the court, the agency shall restore the damaged stream to its prior condition. Employees of an agency acting in the ordinary course of their employment under directions of a superior are not liable for violations under this section.

(3) The department may institute and maintain in the name of the state enforcement proceedings under this section. All fines assessed under this section shall be deposited in the state special revenue fund for the use of the department.

History: En. 26-1509 by Sec. 1, Ch. 339, L. 1975; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1509; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Enforcement power of Department, 87-1-201.

Part 6
Fish and Wildlife Crimestoppers

Part Cross-References

Livestock crimestoppers, Title 81, ch. 6, part 3.

87-5-601. Short title. This part may be cited as the "Fish, Wildlife, and Parks Crimestoppers Act".

History: En. Sec. 1, Ch. 305, L. 1985; amd. Sec. 2, Ch. 393, L. 1997.

87-5-602. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the fish, wildlife, and parks crimestoppers board created in 2-15-3404.

(2) "Department" means the department of fish, wildlife, and parks.

(3) "Program" means the fish, wildlife, and parks crimestoppers program created under 87-5-605.

History: En. Sec. 2, Ch. 305, L. 1985; amd. Sec. 3, Ch. 393, L. 1997.

87-5-603. Functions of board. The board shall recommend to the department:

(1) the names of individuals to be rewarded for providing information used in detecting and combating fish, wildlife, and parks-related crimes;

(2) the amount of any reward recommended; and

(3) means for promoting the program.

History: En. Sec. 3, Ch. 305, L. 1985; amd. Sec. 4, Ch. 393, L. 1997.

87-5-604. Expenses of board members. Members of the board are entitled to no salary but are entitled to expenses incurred while on official business, as provided in 2-18-501 through 2-18-503.

History: En. Sec. 4, Ch. 305, L. 1985.

87-5-605. Powers and duties of department — rules. (1) The department shall:

(a) create, maintain, and promote a statewide fish, wildlife, and parks crimestoppers program in order to assist law enforcement agencies in detecting and combating fish, wildlife, and parks-related crimes; and

(b) consider the board's recommendations and take action on them.

(2) The department may:

(a) advise and assist in the creation and maintenance of local programs, including neighborhood watch programs;

(b) encourage the channeling of information from state and local programs to law enforcement agencies;

(c) foster the detection of fish, wildlife, and parks-related crimes by the public;

(d) encourage the public, through a reward program or otherwise, to provide information that assists in the prosecution of fish, wildlife, and parks-related crimes;

(e) promote state and local programs through the media;

(f) accept gifts, grants, or donations for the furtherance of the program and spend these in compliance with the conditions of the gifts, grants, or donations; and

(g) adopt rules necessary to administer the provisions of this part.

History: En. Sec. 5, Ch. 305, L. 1985; amd. Sec. 5, Ch. 393, L. 1997.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

87-5-606. Confidentiality. The identity of a person submitting information under the program and any information that may lead to the disclosure of such identity is confidential.

History: En. Sec. 6, Ch. 305, L. 1985.

Part 7
Importation, Introduction, and Transplantation of Wildlife

87-5-701. Purpose. The legislature finds that in order to protect Montana's native wildlife and plant species, livestock, horticultural, forestry, and agricultural production, and human health and safety, it is necessary to regulate the importation for introduction and the transplantation or introduction of wildlife in the state and to regulate the importation, transplantation, possession, and sale of exotic wildlife. Serious threats, known and unknown, from the introduction of wildlife and exotic wildlife into Montana necessitate the regulation of the importation for introduction and the transplantation or introduction of wildlife and regulation of the importation, transplantation, possession, and sale of exotic wildlife unless it can be shown that no harm will result from the importation, transplantation, possession, sale, or introduction. Any importation, transplantation, possession, sale, or introduction permitted must be conducted in a manner to ensure that wildlife or exotic wildlife can be controlled if harm arises from unforeseen effects.

History: En. Sec. 2, Ch. 624, L. 1985; amd. Sec. 6, Ch. 536, L. 2003.

87-5-702. Definitions. For purposes of this part, the following definitions apply:

(1) "Controlled exotic wildlife" means species placed on the controlled exotic wildlife list under 87-5-707 that may be imported, possessed, or sold only pursuant to commission and department rules and an authorization permit provided for in 87-5-705(2).

(2) "Domestic animal" means an animal that, through long association with humans, has been bred to a degree that has resulted in genetic changes affecting color, temperament, conformation, or other attributes of the species to an extent that makes the animal unique and distinguishable from wild individuals of the species and that is readily controllable if accidentally released into the wild. The term includes livestock, as defined in 81-2-702, dogs, cats, rodents, Eurasian ferrets, and poultry.

(3) "Exotic wildlife" means a wildlife species that is not native to Montana.

(4) "Feral" means the appearance of an animal and any offspring that have escaped captivity and become wild.

(5) "Importation" means the act of receiving, bringing or having brought, or shipping into the state for a person's temporary or permanent residence or domicile any wildlife from a location outside the state.

(6) "Introduction" means the release from captivity or attempt to release from captivity, intentional or otherwise, wildlife from outside the state into the wild within the state.

(7) "Native wildlife" means a species or subspecies of wildlife that historically occurred in Montana and that has not been introduced by humans or has not migrated into Montana as a result of human activity.

(8) "Noncontrolled exotic wildlife" means animal species traditionally sold or kept as pets and includes animals listed in 87-5-706 or animals that are added to the list in 87-5-706 by commission rule.

(9) "Possession" means to own or have control over an animal for personal use or resale.

(10) "Prohibited exotic wildlife" means animal species placed on the list provided in 87-5-704(3)(a) that may not be imported, possessed, or sold.

(11) "Transplantation" means the release of or attempt to release, intentional or otherwise, wildlife from one place within the state into another part of the state.

(12) (a) "Wildlife" means any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other wild animal or the egg, sperm, embryo, or offspring of the wild animal.

(b) The term does not include domestic animals.

History: En. Sec. 3, Ch. 624, L. 1985; amd. Sec. 7, Ch. 536, L. 2003.

87-5-703. Applicability to other provisions for importation or introduction of wildlife. Sections 87-5-701 through 87-5-704, 87-5-711, 87-5-713 through 87-5-716, and 87-5-721 do not apply to the provisions on importation or introduction of wildlife contained in the following laws:

(1) Title 80;
(2) 87-3-208 and 87-6-219(1)(a);
(3) 87-3-221 through 87-3-224 or 87-3-210, 87-3-225 through 87-3-227, and 87-6-219(1)(b);
(4) 87-4-422;
(5) 87-5-112;
(6) 87-5-205;
(7) 87-5-302; or
(8) Title 81, chapter 2.

History: En. Sec. 11, Ch. 624, L. 1985; amd. Sec. 13, Ch. 376, L. 1989; amd. Sec. 1, Ch. 281, L. 2005; amd. Sec. 118, Ch. 258, L. 2011.

87-5-704. *(Temporary)* **Rulemaking.** (1) The commission may adopt rules to implement 87-5-701, 87-5-702, and 87-5-711 through 87-5-715. In implementing 87-5-713, the commission may adopt rules approving species of wildlife that may be introduced by the department. In implementing 87-5-715, the commission may adopt rules to authorize the control or extermination by the department of introduced wildlife species.

(2) The department may adopt rules to implement 87-5-713 and 87-5-715. In implementing 87-5-713 and 87-5-715, the department may not adopt rules in the subject areas reserved to the commission in subsection (1).

(3) (a) The commission may adopt rules to implement 87-5-705 through 87-5-709 and 87-5-712 regarding the importation, possession, and sale of exotic wildlife, including adoption of a list of controlled exotic wildlife and a list of prohibited exotic wildlife. The commission may by rule add to the list of noncontrolled exotic wildlife provided in 87-5-706. The department of livestock may not issue import permits for exotic wildlife on a list of controlled exotic wildlife or prohibited exotic wildlife without authorization from the department.

(b) The commission may adopt rules regarding the operation of the classification review committee established in 87-5-708.

(4) The department may adopt rules regarding issuance of the authorization permit provided for in 87-5-705(2), including the establishment of a reasonable fee for the permit.

87-5-704. *(Effective March 1, 2026)* **Rulemaking.** (1) The commission may adopt rules to implement 87-5-701, 87-5-702, and 87-5-711 through 87-5-715. In implementing 87-5-713, the commission may adopt rules approving species of wildlife that may be introduced by the department. In implementing 87-5-715, the commission may adopt rules to authorize the control or extermination by the department of introduced wildlife species.

(2) The department may adopt rules to implement 87-5-713 and 87-5-715. In implementing 87-5-713 and 87-5-715, the department may not adopt rules in the subject areas reserved to the commission in subsection (1).

(3) (a) The commission may adopt rules to implement 87-5-705 through 87-5-709 and 87-5-712 regarding the importation, possession, and sale of exotic wildlife, including adoption of a list of controlled exotic wildlife and a list of prohibited exotic wildlife. The commission may by rule add to the list of noncontrolled exotic wildlife provided in 87-5-706. The department of livestock may not issue import permits for exotic wildlife on a list of controlled exotic wildlife or prohibited exotic wildlife without authorization from the department.

(b) The commission may adopt rules regarding the operation of the classification review committee established in 87-5-708.

(4) The department may adopt rules regarding issuance of the authorization permit provided for in 87-5-705(2).

History: En. Sec. 10, Ch. 624, L. 1985; amd. Sec. 8, Ch. 536, L. 2003; amd. Sec. 2, Ch. 281, L. 2005; amd. Sec. 72, Ch. 44, L. 2007; amd. Sec. 6, Ch. 50, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 50, L. 2025. Amendment effective March 1, 2026.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

87-5-705. *(Temporary)* **Regulation of exotic wildlife.** (1) A person may not import into the state, possess, or sell any exotic wildlife unless:

(a) the importation, possession, or sale of the exotic wildlife is allowed by law or commission rule; and

(b) the person has obtained authorization for importation from the department of livestock pursuant to Title 81, chapter 2, part 7.

(2) The department may issue a permit for authorizing the possession or sale of controlled exotic wildlife and make the permit available to persons who wish to import, possess, or sell controlled exotic wildlife, subject to rules of the commission and the department. The department may charge a reasonable fee, as determined by department rule, for the issuance of the authorization permit.

87-5-705. *(Effective March 1, 2026)* **Regulation of exotic wildlife — permit and renewal fees.** (1) A person may not import into the state, possess, or sell any exotic wildlife unless:

(a) the importation, possession, or sale of the exotic wildlife is allowed by law or commission rule; and

(b) the person has obtained authorization for importation from the department of livestock pursuant to Title 81, chapter 2, part 7.

(2) The department may issue a permit for authorizing the possession or sale of controlled exotic wildlife and make the permit available to persons who wish to import, possess, or sell controlled exotic wildlife, subject to rules of the commission and the department.

(3) The department shall assess a fee of $125 to obtain or renew a permit to possess a controlled exotic wildlife species. The permit expires on February 28 of the 5th year following issuance. Renewal is contingent on submission of the permit fee and any required reporting of current inventory and changes to inventory during the preceding year.

(4) The department shall assess a fee of $500 to obtain a permit to sell, breed, or exchange a controlled exotic wildlife species. The permit expires on February 28 of the 5th year following issuance. Renewal is contingent on submission of the permit fee and any required reporting of current inventory and changes to inventory during the preceding years.

History: En. Sec. 1, Ch. 536, L. 2003; amd. Sec. 7, Ch. 50, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 7, Ch. 50, L. 2025. Amendment effective March 1, 2026.

87-5-706. Noncontrolled exotic wildlife authorized for possession or sale. (1) The following noncontrolled exotic wildlife may not be released or transplanted in the state but may be possessed or sold as pets in Montana without a permit:

(a) tropical and subtropical birds in the order Passeriformes, including but not limited to birds in the families:

(i) Sturnidae (mynahs);

(ii) Ramphastidae (toucans, toucanettes);

(iii) Fringillidae (siskins);
(iv) Estrildidae (finches);
(v) Emberizidae (cardinals);
(vi) Ploceidae (weavers);
(vii) Timaliidae (mesias);
(viii) Viduinae (wydahs);
(ix) Thraupidae (tanagers);
(x) Zosteropidae (zosterops);
(xi) Psittacidae (parrots);
(xii) Loriidae (lories); and
(xiii) Cacatuidae (cockatoos);
(b) nonnative species in the subfamily Phaisianae, except:
(i) chukar partridge (Alectoris chukar);
(ii) gray (Hungarian) partridge (Perdix perdix);
(iii) ring-necked pheasant (Phasianus colchicus); and
(iv) turkey (Meleagris gallopavo);

(c) all tropical fish, subtropical fish, marine fish, common goldfish (Carassius auratus), and koi (Cyprinus carpio) for use in residential and office aquariums;

(d) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of nonvenomous snakes not on the controlled or prohibited lists in the families:

(i) Boidae (boas);
(ii) Bolyeriidae (Round Island Boas);
(iii) Tropidophiidae (dwarf boas);
(iv) Pythonidae (pythons);
(v) Colubridae (modern snakes);
(vi) Acrochordidae (file and elephant trunk snakes);
(vii) Xenopeltidae (sunbeam snakes);
(viii) Aniliidae (pipe snakes);
(ix) Uropeltidae (shield-tailed snakes);
(x) Anomalepididae (blind snakes);
(xi) Leptotyphlopidae (blind snakes); and
(xii) Typhlopidae (blind snakes);

(e) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of nonvenomous lizards not on the controlled or prohibited lists, including but not limited to the following families or subfamilies:

(i) Agamidae (chisel-teeth lizards);
(ii) Amphisbaenidae (worm lizards);
(iii) Anelytropsidae (limbless lizards);
(iv) Anguidae (glass and alligator lizards);
(v) Anniellidae (legless lizards);
(vi) Chamaeleonidae (chameleons);
(vii) Cordylidae (girdle-tailed lizards);
(viii) Corytophanidae (casquehead lizards);
(ix) Crotaphytidae (collared and leopard lizards);
(x) Dibamidae (blind lizards);
(xi) Eublepharidae (eyelid geckos);
(xii) Feyliniidae (African snake skinks);
(xiii) Gekkonidae (geckos);
(xiv) Helodermatidae (beaded lizards and gila monsters);
(xv) Iguanidae (iguanas);
(xvi) Lacertidae (wall lizards);
(xvii) Lanthanotidae (earless monitor);
(xviii) Phrynosomatidae (earless, spiny, and horned lizards);
(xix) Polychrotidae (anoles);
(xx) Pygopodidae (snake lizards);
(xxi) Scincidae (skinks);

(xxii) Teiidae (whiptail);
(xxiii) Tropiduridae (neotropical ground lizards);
(xxiv) Varanidae (monitor lizard);
(xxv) Xantusiidae (night lizards); and
(xxvi) Xenosauridae (knob-scaled lizards);

(f) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of turtles with a carapace or shell length of more than 4 inches and not on the controlled or prohibited lists in the families:

(i) Carettochelyidae (New Guinea softshell turtles);
(ii) Chelidae (snake-necked turtles);
(iii) Chelydridae (snapping turtles);
(iv) Dermatemydidae (Central American river turtle);
(v) Emydidae (pond turtles);
(vi) Kinosternidae (mud turtles and musk turtles);
(vii) Pelomedusidae (hidden-necked turtles);
(viii) Platysternidae (big-headed turtle);
(ix) Testudinidae (tortoises); and
(x) Trionychidae (soft-shelled turtles);

(g) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of frogs and toads not on the controlled or prohibited lists in the families:

(i) Atelopodidae (harlequin frogs);
(ii) Bufonidae (true toads);
(iii) Centrolenidae (glass frogs);
(iv) Dendrobatidae (poison dart frogs);
(v) Hylidae (tree frogs);
(vi) Leptodactylidae (rain frogs);
(vii) Microhylidae (narrow-mouthed toads);
(viii) Pelobatidae (spadefoot toads);
(ix) Pelodytidae (old world spadefoot toads);
(x) Ranidae (true frogs, except bullfrogs, Rana catesbeiana);
(xi) Rhacophoridae (old world tree frogs); and
(xii) Rhinophrynidae (Mexican burrowing frog);

(h) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of limbless amphibians not on the controlled or prohibited lists in the families:

(i) Caeciliidae (caecilians);
(ii) Ichthyophiidae (fish caecilians);
(iii) Rhinatrematidae (beaked caecilians);
(iv) Scolecomorphidae (tropical caecilians); and
(v) Uraeotyphlidae (Indian caecilians); and

(i) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of salamanders not on the controlled or prohibited lists in the families:

(i) Ambystomatidae (mole salamanders);
(ii) Amphiumidae (amphiumas);
(iii) Cryptobranchidae (hellbenders);
(iv) Dicamptodontidae (giant salamanders);
(v) Hynobiidae (Asian salamanders);
(vi) Plethodontidae (woodland salamanders);
(vii) Proteidae (waterdogs);
(viii) Salamandridae (newts, except for rough-skinned newt, Taricha granulosa); and
(ix) Sirenidae (sirens).

(2) The commission may by rule authorize the possession or sale of other species of noncontrolled exotic wildlife that are not listed in subsection (1) if it is determined that the other species present minimal disease, ecological, environmental, safety, or health risks.

History: En. Sec. 2, Ch. 536, L. 2003.

87-5-707. Controlled exotic wildlife list. As provided in 87-5-704(3)(a), the commission, after a public hearing and recommendation from the classification review committee established in 87-5-708, may by rule adopt a list of controlled exotic wildlife that may be imported, possessed, or sold only pursuant to commission and department rules and department authorization.

History: En. Sec. 3, Ch. 536, L. 2003.

87-5-708. Classification review committee — composition, appointment, and duties. (1) The director shall appoint a classification review committee whose duty is to advise the commission regarding the importation, possession, and sale of exotic wildlife, including recommendations on animals to be placed on the noncontrolled, controlled, or prohibited exotic wildlife list.

(2) The classification review committee is composed of at least one representative from:
(a) the department;
(b) the department of public health and human services;
(c) the department of livestock;
(d) the department of agriculture;
(e) a business that breeds or exhibits exotic wildlife; and
(f) the general public who has an interest in fish or wildlife.

(3) Members of the classification review committee are not entitled to compensation or travel expenses as provided in 2-15-122.

History: En. Sec. 4, Ch. 536, L. 2003.

87-5-709. Exceptions and exemptions to possession and sale of exotic wildlife. (1) Sections 87-5-705 through 87-5-708 and this section do not apply to:

(a) institutions that have established that their proposed facilities are adequate to provide secure confinement of wildlife, including:

(i) an accredited zoological garden or wildlife sanctuary chartered by the state as a nonprofit corporation;

(ii) a roadside menagerie permitted under 87-4-803 that was established for the purpose of exhibition or attracting trade;

(iii) a research facility for testing and science that employs individuals licensed under 37-34-301 or that submits evidence to the department that it meets animal testing standards as provided by the national institutes of health, the national science foundation, the centers for disease control and prevention, the United States department of agriculture, or another similar nationally recognized and approved testing standard; or

(b) domestic animals.

(2) Authorization for possession must be provided by the department for exotic wildlife possessed as of January 1, 2004, and the authorization may include any conditions and restrictions necessary to minimize risks.

History: En. Sec. 5, Ch. 536, L. 2003; amd. Sec. 3, Ch. 281, L. 2005; amd. Sec. 6, Ch. 211, L. 2021.

87-5-710 reserved.

87-5-711. Control of importation for introduction and transplantation or introduction of wildlife. (1) Except as otherwise provided, the importation for introduction or the transplantation or introduction of any wildlife is prohibited unless the commission determines, based upon scientific investigation and after public hearing, that a species of wildlife poses no threat of harm to native wildlife and plants or to agricultural production and that the transplantation or introduction of a species has significant public benefits.

(2) With regard to the transplantation or introduction of a fish species not previously legally transplanted to a specific water body within the state or not previously legally introduced to the state, the requirement for scientific investigation in subsection (1) may be satisfied only by completion of an environmental review conforming to the provisions of Title 75, chapter 1, part 2.

History: En. Sec. 4, Ch. 624, L. 1985; amd. Sec. 1, Ch. 501, L. 1991.

87-5-712. Authority for commission to control importation, possession, or sale of certain wildlife species and exotic wildlife. (1) The commission may, after public hearing and recommendation by the classification review committee in 87-5-708, list by administrative rule wildlife species or exotic wildlife that may not be imported, possessed, or sold as pets for captive breeding for research or commercial purposes, for the commercial pet trade, or for any other reason. A wildlife species or exotic wildlife may be placed on the list only after the commission finds that:

(a) the exotic wildlife would not be readily subject to control by humans while in captivity;

(b) if released from captivity, the exotic wildlife would pose a substantial threat to native wildlife and plants or agricultural production; or

(c) the exotic wildlife would pose a risk to human health or safety, livestock, or native wildlife through disease transmission, hybridization, or ecological or environmental damage.

(2) The commission may make exceptions for wildlife species or exotic wildlife otherwise prohibited under this section if the wildlife species or exotic wildlife is controlled in an institution listed in 87-5-709(1)(a) and under any conditions specified by the commission.

History: En. Sec. 7, Ch. 624, L. 1985; amd. Sec. 9, Ch. 536, L. 2003; amd. Sec. 4, Ch. 281, L. 2005.

87-5-713. Control of wildlife species permitted to be transplanted or introduced. Any wildlife species listed in 87-5-714 or approved by the commission for introduction or transplantation may be introduced or transplanted only subject to a plan developed by the department to assure that the population can be controlled if any unforeseen harm should occur.

History: En. Sec. 5, Ch. 624, L. 1985.

87-5-714. Wildlife species authorized for introduction or transplantation. (1) The following wildlife species may be introduced or transplanted by the department based upon scientific investigation and upon approval of the commission:

(a) gray (Hungarian) partridge (Perdix perdix);
(b) chukar partridge (Alectoris chukar);
(c) ring-necked pheasant (Phasianus colchicus);
(d) turkey (Meleagris gallopavo);
(e) rainbow trout (Salmo gairdneri);
(f) golden trout (Salmo aquabonita);
(g) brown trout (Salmo trutta);
(h) brook trout (Salvelinus fontinalis);
(i) lake trout (Salvelinus namaycush);
(j) northern pike (Esox lucius);
(k) black bullhead (Ictalurus melas);
(l) yellow bullhead (Ictalurus natalis);
(m) largemouth bass (Micropterus salmoides);
(n) smallmouth bass (Micropterus dolomieui);
(o) pumpkinseed sunfish (Lepomis gibbosus);
(p) bluegill (Lepomis macrochirus);
(q) green sunfish (Lepomis cyanellus);
(r) rock bass (Ambloplites rupestris);
(s) black crappie (Pomoxis nigromaculatus);
(t) white crappie (Pomoxis annularis);
(u) yellow perch (Perca flavescens);
(v) walleye (Sander vitreus);
(w) cisco (tulibee) (Coregonus artedii);
(x) spottail shiner (Notropis hudsonius);
(y) kokanee salmon (Oncorhynchus nerka);
(z) chinook salmon (Oncorhynchus tshawytscha);
(aa) lake whitefish (Coregonus clupeaformis);
(bb) golden shiner (Notemigonus crysoleucas).

(2) The commission may by rule and subject to the provisions of 87-5-711 authorize the department to transplant or introduce species of wildlife not listed in subsection (1).

History: En. Sec. 9, Ch. 624, L. 1985; amd. Sec. 45, Ch. 19, L. 2011.

87-5-715. Extermination or control of transplanted or introduced wildlife or feral species posing threat. Any wildlife or feral species transplanted or introduced in the state may be exterminated or controlled by the department if the commission determines that the species poses harm to native wildlife or plants or to agricultural production.

History: En. Sec. 6, Ch. 624, L. 1985; amd. Sec. 12, Ch. 376, L. 1989.

87-5-716. Consultation with departments of agriculture, public health and human services, and livestock. The commission and the department shall consult with the departments of agriculture, public health and human services, and livestock in all matters relating to the control of wildlife species and exotic wildlife that may have a harmful effect on agricultural production or livestock operations in the state or that may pose a risk to human health or safety.

History: En. Sec. 8, Ch. 624, L. 1985; amd. Sec. 10, Ch. 536, L. 2003.

87-5-717 through 87-5-720 reserved.

87-5-721. Penalty — license and permit revocation and denial. (1) Except as provided in subsection (2), a person convicted of a violation of this part shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the department, upon conviction of the person, shall revoke any license or permit issued by it under this title to the person and deny any application by the person for a license or permit under this title for a period not to exceed 2 years from the date of the conviction.

(2) A person who intentionally imports, introduces, or transplants fish in violation of this part:

(a) is guilty of an offense punishable by a fine of not less than $2,000 or more than $10,000 and imprisonment for up to 1 year. A sentencing court may consider an appropriate amount of community service in lieu of imprisonment. A sentencing court may not defer or suspend $2,000 of the fine amount.

(b) is civilly liable for the amount necessary to eliminate or mitigate the effects of the violation. The damages may be recovered on behalf of the public by the department or by the county attorney of the county in which the violation occurred, in a civil action in a court of competent jurisdiction. Money recovered by the department or a county attorney must be deposited in the state special revenue fund as provided in 87-1-601(1).

(c) upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 5 years or more than 10 years from the date of conviction or forfeiture. If the time necessary to eliminate or mitigate the effects of the violation exceeds the imposed forfeiture period, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for an additional period of time. If the effects of the violation cannot be eliminated or mitigated, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for life.

(3) Any exotic wildlife held in violation of this part must be shipped out of state, returned to the point of origin, or destroyed within a time set by the department, not to exceed 6 months. The person in possession of the exotic wildlife may choose the method of disposition. If the person in possession of the exotic wildlife does not comply with this requirement, the department may confiscate and then house, transport, or destroy the unlawfully held exotic wildlife. The department may charge any person convicted of a violation of this part for the costs associated with the handling, housing, transporting, or destroying of the exotic wildlife.

History: En. Sec. 12, Ch. 624, L. 1985; amd. Sec. 2, Ch. 501, L. 1991; amd. Sec. 2, Ch. 223, L. 1993; amd. Sec. 1, Ch. 344, L. 1997; amd. Sec. 5, Ch. 281, L. 2005; amd. Sec. 17, Ch. 429, L. 2009; amd. Sec. 1, Ch. 139, L. 2011; amd. Sec. 119, Ch. 258, L. 2011.

Cross-References

Fish and wildlife violations — concurrent jurisdiction between Justices' Courts and District Courts for certain violations, 3-10-303.

87-5-722 through 87-5-724 reserved.

87-5-725. Notification of transplantation or introduction of wildlife. (1) When the decision to introduce or transplant a wolf, bear, or mountain lion is made pursuant to this part, the department shall:

(a) provide public notice on its website and, when practical, by personal contact in the general area where the animal is released; and

(b) notify the public through print and broadcast media of the availability of release information on the department's website.

(2) Prior permission from the landowner is required before any animal may be transplanted onto private property.

History: En. Sec. 1, Ch. 119, L. 2009.

Part 8
Montana Wildlife Habitat Improvement Act

87-5-801. Short title. This part may be cited as the "Kelly Flynn Montana Wildlife Habitat Improvement Program and Legacy Act".

History: En. Sec. 1, Ch. 342, L. 2017; amd. Sec. 1, Ch. 64, L. 2023; amd. Sec. 6, Ch. 758, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 758, L. 2025. Amendment effective July 1, 2025.

87-5-802. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Council" means the wildlife habitat improvement advisory council established in 87-5-803.

(2) "Department" means the department of fish, wildlife, and parks established in 2-15-3401.

(3) "Habitat" means the natural environment where a species lives or thrives.

(4) "Noxious weed" has the same meaning as provided in 7-22-2101.

History: En. Sec. 2, Ch. 342, L. 2017; amd. Sec. 7, Ch. 758, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 7, Ch. 758, L. 2025. Amendment effective July 1, 2025.

87-5-803. Wildlife habitat improvement advisory council — duties — members. (1) There is a wildlife habitat improvement advisory council appointed by the director that ranks projects pursuant to 87-5-804 and advises the department on the administration of this part, including making recommendations on additional weed and soil treatment options and methods that are eligible for funding under this part.

(2) The council consists of the following voting members:

(a) a wildlife biologist;

(b) a member of an Indian tribe within Montana as defined in 2-15-141;

(c) an agricultural or livestock producer or a representative of an agricultural or livestock producer organization in Montana;

(d) a member of a conservation organization; and

(e) a representative of the Montana weed control association.

History: En. Sec. 3, Ch. 342, L. 2017; amd. Sec. 2, Ch. 64, L. 2023; amd. Sec. 8, Ch. 758, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 8, Ch. 758, L. 2025. Amendment effective July 1, 2025.

87-5-804. Wildlife habitat improvement projects — ranking. (1) The council shall rank wildlife habitat improvement project proposals pursuant to 87-5-806 and according to rules adopted by the department pursuant to 87-5-808 and make funding recommendations to the department.

(2) In ranking the projects, the council shall give preference to projects in wildlife habitat that include:

(a) public access;

(b) the number of project partners involved; and

(c) the amount of additional funding provided to carry out a project.

(3) Factors providing for preference under subsection (2) may not be considered mandatory.

History: En. Sec. 4, Ch. 342, L. 2017; amd. Sec. 9, Ch. 758, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 9, Ch. 758, L. 2025. Amendment effective July 1, 2025.

87-5-805. Account — deposits. (1) There is a wildlife habitat improvement account in the federal special revenue fund established in 17-2-102. Up to $2 million annually in federal special revenue funds for wildlife purposes as appropriated by the legislature may be deposited in the account.

(2) The department may accept gifts, grants, contracts, or other funds designated for the purposes of this part. Money received by the state in the form of gifts, grants, reimbursements, or allocations from any source intended to be used for the purposes of this part must be deposited as appropriate in the federal special revenue fund or in the state special revenue fund established in 17-2-102.

History: En. Sec. 5, Ch. 342, L. 2017.

87-5-806. Administration and expenditure of funds. (1) State, tribal, and federal agencies, as well as conservation districts, irrigation districts, grazing associations, weed control districts, other entities the department considers appropriate for wildlife habitat improvement projects, and nonprofit organizations exempt from taxation under section 26 U.S.C. 501(c)(3), may apply for project funding.

(2) The department may expend funds deposited pursuant to 87-5-813 and87-5-805 through grants or contracts to:

(a) improve, conserve, protect, and maintain terrestrial habitat;

(b) improve, conserve, and maintain aquatic habitat;

(c) participate in water enhancement projects to benefit aquatic habitat and allow for other watershed enhancements that benefit fish, wildlife, and water conservation;

(d) improve and maintain range conditions, restoration of habitat, and drought resilience designed to create habitat uplift on private, public, and tribal lands;

(e) address and mitigate impacts that are detrimental to wildlife habitat and the environment and improve the condition of the land due to noxious weeds, soil disturbance, and loss of diverse habitat communities;

(f) mitigate conflicts and reduce potential for disease transmission between wildlife and domestic livestock;

(g) help fund activities and employees of the state tribal wildlife programs; and

(h) create habitat uplift and net conservation gain for species of conservation need.

(3) The department may expend the funds deposited pursuant to 87-5-813 to pay costs incurred by the department for administering this part and providing support to the council, including but not limited to personal services costs, operating costs, and other administrative costs. Administrative costs may not exceed 15% of the total amount expended pursuant to subsection (2).

History: En. Sec. 6, Ch. 342, L. 2017; amd. Sec. 3, Ch. 64, L. 2023; amd. Sec. 10, Ch. 758, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 10, Ch. 758, L. 2025. Amendment effective July 1, 2025.

87-5-807. Reporting — evaluations. (1) A project sponsor shall:

(a) monitor and document the timelines, progress, and results of the project;

(b) evaluate the overall effectiveness of the project; and

(c) provide project and fiscal reports as required by contract.

(2) The department shall:

(a) conduct field evaluations of projects;

(b) require a project sponsor to initiate corrective action if an evaluation finds inadequacies in the project's progress or fiscal reporting; and

(c) on or before September 1 of each year preceding the convening of a regular session of the legislature, provide a report to the environmental quality council in accordance with 5-11-210. The report must include:

(i) an overview of the program;

(ii) a listing of projects funded during the reporting period;

(iii) an analysis of how projects funded are improving wildlife habitat; and
(iv) a summary of past and current funding.
History: En. Sec. 7, Ch. 342, L. 2017.

87-5-808. Rulemaking authority. The department shall adopt rules to implement this part, including a scoring system for ranking projects proposed to the council under 87-5-804.
History: En. Sec. 8, Ch. 342, L. 2017; amd. Sec. 11, Ch. 758, L. 2025.

Compiler's Comments
2025 Amendment: See 2025 Session Law for amendment made by sec. 11, Ch. 758, L. 2025. Amendment effective July 1, 2025.

87-5-809 and 87-5-810 reserved.

87-5-811. Habitat legacy account. (1) There is a habitat legacy account in the state special revenue fund established in 17-2-102. The account is administered by the department of fish, wildlife, and parks. All funds received pursuant to 16-12-111(4)(b) must be deposited in the account.

(2) Except as provided in subsection (3), at the end of each fiscal year the state treasurer shall make the following transfers from this account:

(a) 75% to the land and wildlife stewardship account established in 87-5-812 to be used solely, together with the interest and income from the money, as funding to secure wildlife habitat pursuant to 87-1-209 and 87-5-812;
(b) 20% to the account established in 87-5-813; and
(c) 5% to the account established in 87-5-814.

(3) If the account established in 87-5-812 has a balance of unobligated and unexpended funds that exceeds $50 million, then the transfers provided for in subsection (2) may not be made, and the department shall instead make the following transfers:

(a) 80% to the account established in 87-5-813; and
(b) 20% to the account established in 87-5-814.

(4) The amount in subsection (3) must increase each year by an inflation adjustment that is based on any change to the consumer price index from the previous year. The consumer price index to be used for the calculation is the consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor.
History: En. Sec. 1, Ch. 758, L. 2025.

Compiler's Comments
Effective Date: Section 15, Ch. 758, L. 2025, provided: "[This act] is effective July 1, 2025."

87-5-812. Land and wildlife stewardship state special revenue account. (1) There is a land and wildlife stewardship account in the state special revenue fund established in 17-2-102 that is administered by the department of fish, wildlife, and parks for the benefit of the department of fish, wildlife, and parks. All funds received pursuant to 87-5-811 must be deposited in the account.

(2) Funds in the account may be used, together with the interest and income from the money, only as funding:

(a) to secure wildlife habitat pursuant to 87-1-209;
(b) for state water projects up to $4 million per fiscal year in coordination with the department of natural resources and conservation; or
(c) for any conservation projects that include a public access component.

(3) The account retains its own interest.

(4) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account. *(Subsection (2)(b) terminates June 30, 2033—sec. 16, Ch. 758, L. 2025.)*
History: En. Sec. 2, Ch. 758, L. 2025.

Compiler's Comments
Effective Date: Section 15, Ch. 758, L. 2025, provided: "[This act] is effective July 1, 2025."
Termination: Section 16, Ch. 758, L. 2025, provided: "[Section 2(2)(b)] [87-5-812(2)(b)] terminates June 30, 2033."

87-5-813. Wildlife habitat improvement project state special revenue account. (1) There is a wildlife habitat improvement project account in the state special revenue fund established in 17-2-102 that is administered by the department of fish, wildlife, and parks for the benefit of the department of fish, wildlife, and parks. All funds received pursuant to 87-5-811 must be deposited in the account.

(2) Funds in the account may be used only as funding for wildlife improvement projects in the same manner as funding under 87-5-806.

(3) The account retains its own interest.

(4) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account.

History: En. Sec. 3, Ch. 758, L. 2025.

Compiler's Comments

Effective Date: Section 15, Ch. 758, L. 2025, provided: "[This act] is effective July 1, 2025."

87-5-814. Big game and wildlife highway crossings and accommodations account — purpose — funds invested. (1) There is a big game and wildlife highway crossings and accommodations state special revenue account in the state special revenue fund established in 17-2-102 administered by the department of fish, wildlife, and parks.

(2) The purpose of the account is to provide money exclusively for the design, construction, identification, maintenance, and conservation of wildlife crossings and other related crossing accommodations to improve wildlife permeability in the state, which may include but is not limited to:

(a) matching any federal money for a project to design, construct, identify, maintain, or protect wildlife crossings and other related crossing accommodation features;

(b) conducting studies on wildlife crossings and other related crossing accommodations;

(c) designing or constructing wildlife crossings and other related crossing accommodation features;

(d) planning related to wildlife crossings and other related crossing accommodation features, including assessing risk of wildlife disease transmission;

(e) staffing needs related to the design, construction, identification, maintenance, and conservation of wildlife crossings and other related crossing accommodation features; and

(f) any other needs the department identified in consultation with the department of transportation related to wildlife highway crossing accommodations.

(3) There must be deposited in the account transfers, gifts, grants, donations, income from investment of the fund, and any other money distributed or otherwise allocated to the fund.

(4) Money in the account may be used to fund the department of transportation for eligible projects or programs as determined by the department of fish, wildlife, and parks. The department of fish, wildlife, and parks shall consult with the department of transportation before funding qualifying projects in the state in accordance with subsection (2).

(5) Money that was not encumbered or expended from the account during the previous biennium must remain in the account.

(6) Deposits to the account must be placed in short-term investments to accrue interest. The interest must be deposited in the account.

History: En. Sec. 4, Ch. 758, L. 2025.

Compiler's Comments

Effective Date: Section 15, Ch. 758, L. 2025, provided: "[This act] is effective July 1, 2025."

Part 9
Montana Greater Sage-Grouse Stewardship Act

Part Cross-References

Montana sage grouse oversight team — composition, 2-15-243.

87-5-901. Short title. This part may be cited as the "Montana Greater Sage-Grouse Stewardship Act".

History: En. Sec. 2, Ch. 445, L. 2015; Sec. 76-22-101, MCA 2019; redes. 87-5-901 by Sec. 3, Ch. 326, L. 2021.

87-5-902. Legislative findings and purpose. (1) The legislature finds that it is in the best interests of Montana's economy, the economic stability of school trust lands, and sage grouse conservation and management to enact the Montana Greater Sage-Grouse Stewardship Act.

(2) The purpose of this act is to provide competitive grant funding and establish ongoing free-market mechanisms for voluntary, incentive-based conservation measures that emphasize maintaining, enhancing, restoring, expanding, and benefiting sage grouse habitat and populations on private lands, and public lands as needed, that lie within core areas, general habitat, or connectivity areas.

History: **En. Sec. 3, Ch. 445, L. 2015; Sec. 76-22-102, MCA 2019; redes. 87-5-902 by Sec. 3, Ch. 326, L. 2021.**

87-5-903. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Connectivity area" means an area that provides an important linkage among populations of sage grouse, particularly between core areas or priority populations in adjacent states and across international borders.

(2) "Conservation bank" means a site or group of sites established through an agreement with the United States fish and wildlife service to provide ecological functions and services expressed as credits that are conserved and managed for sage grouse habitat and populations and used to offset debits occurring elsewhere.

(3) "Core area" means an area that has the highest conservation value for sage grouse and has the greatest number of displaying male sage grouse and associated sage grouse habitat.

(4) "Credit" means a defined unit of trade representing the accrual or attainment of resource functions or value at a proposed project site.

(5) "Debit" means a defined unit of trade representing the loss of resource functions or value at an impact or project site. The unit of measure is the same as that for a credit within a specific mitigation system.

(6) "Department" means the department of natural resources and conservation.

(7) "General habitat" means an area providing habitat for sage grouse but not identified as a core area or connectivity area.

(8) "Habitat exchange" means a market-based system that facilitates the exchange of credits and debits between interested parties.

(9) "Habitat quantification tool" means the scientific method used to evaluate vegetation and environmental conditions related to the quality and quantity of sage grouse habitat and to quantify and calculate the value of credits and debits.

(10) "Oversight team" means the Montana sage grouse oversight team established in 2-15-243.

(11) "Project developer" means an entity proposing an action that will result in a debit.

(12) "Sage grouse" means the greater sage-grouse (Centrocercus urophasianus).

History: **En. Sec. 4, Ch. 445, L. 2015; Sec. 76-22-103, MCA 2019; redes. 87-5-903 by Sec. 3, Ch. 326, L. 2021.**

87-5-904. Montana sage grouse oversight team — rulemaking. The oversight team shall adopt rules to administer the provisions of this part, including:

(1) eligibility and evaluation criteria for grants distributed pursuant to 87-5-910 for projects that maintain, enhance, restore, expand, or benefit sage grouse habitat and populations, including but not limited to requirements for matching funds and in-kind contributions and consideration of the socioeconomic impacts of a proposed project on the local community. The evaluation criteria must give greater priority to proposed projects that:

(a) involve partnerships between public and private entities;

(b) provide matching funds;

(c) use the habitat quantification tool adopted pursuant to subsection (2); and

(d) maximize the amount of credits generated per dollars of funds awarded.

(2) the designation of a habitat quantification tool in consideration of applicable United States fish and wildlife service sage grouse policies, state law, and any rules adopted pursuant to this part;

(3) subject to the provisions of 87-5-905(2), a method to track and maintain the number of credits attributable to projects funded pursuant to this part that are available to a project developer to purchase for compensatory mitigation to offset debits under 87-5-911;

(4) methods of compensatory mitigation available under 87-5-911;

(5) review and monitoring of projects funded pursuant to this part;

(6) criteria for the acceptance or rejection of grants, gifts, transfers, bequests, and donations, including interests in real or personal property; and

(7) guidance on management options for any real property conveyed to the state under this part, including its sale or lease.

History: En. Sec. 5, Ch. 445, L. 2015; amd. Sec. 1, Ch. 311, L. 2017; Sec. 76-22-104, MCA 2019; redes. 87-5-904 by Sec. 3, Ch. 326, L. 2021.

87-5-905. Montana sage grouse oversight team — duties — powers. (1) The oversight team shall:

(a) cooperate with organizations to maintain, enhance, restore, expand, and benefit sage grouse habitat and populations;

(b) identify and map core areas, connectivity areas, and general habitat, subject to the approval of the governor;

(c) evaluate grant applications. As part of its evaluation, the oversight team shall solicit and consider the views of interested and affected persons and entities, including local, state, tribal, and federal governmental agencies, and boards, commissions, and other political subdivisions of the state;

(d) subject to the provisions of 87-5-909, select grant applications to receive funding from the sage grouse stewardship account. The oversight team has the discretion to determine the amount of each grant in accordance with the provisions of this part and may attach conditions of use to the grant.

(e) review and decide whether to approve proposals for the transfer to or acceptance by the state of a fee simple interest in real property. The oversight team shall recommend an approved proposal to the board of land commissioners for a final determination. Prior to making a recommendation, the oversight team shall publish a notice in a newspaper of general circulation in the county in which the real property is located and provide an opportunity for public comment.

(f) review and decide whether to accept offers, from any source, in the form of grants, gifts, transfers, bequests, or donations of money, personal property, or an interest in real property other than a fee simple interest; and

(g) review and act upon compensatory mitigation plans proposed under 87-5-911 with a goal of no net loss of habitat and a net gain preferred. If a plan includes a financial contribution to the sage grouse stewardship account established in 87-5-909, the oversight team shall, using the habitat quantification tool, determine how to secure enough credits with the financial contribution to offset the debits of the project.

(h) semiannually review the number of requests made by project developers for review of proposed projects for compensatory mitigation requirements. This semiannual review must include information on:

(i) how much time elapsed between the date the initial request was received and the date a proposed compensatory mitigation plan was referred to the oversight team for consideration;

(ii) how many projects did or did not proceed after the initial request; and

(iii) if a project did not proceed or a proposed compensatory mitigation plan was not referred to the oversight team, the reason why it did not proceed or was not referred.

(i) work with stakeholders to streamline the compensatory mitigation review process, including calculation of reduced mitigation costs for low-impact projects such as trenchless excavation; and

(j) monitor long-term staffing needs to effectively implement this part, as well as the costs and benefits of doing so.

(2) If a habitat exchange is authorized in Montana by the United States fish and wildlife service, the oversight team may transfer credits it is tracking pursuant to 87-5-904(3) to the habitat exchange, provided that:

(a) the habitat exchange uses the habitat quantification tool to quantify and calculate the value of credits available for purchase; and

(b) if the United States fish and wildlife service revokes authorization of the habitat exchange, the balance of the credits held by the exchange that were transferred to it by the oversight team are transferred back to the oversight team or to another habitat exchange authorized by the United States fish and wildlife service.

(3) The oversight team shall retroactively calculate and make available credits for leases and conservation easements purchased with funds disbursed pursuant to this part after May 7, 2015, but prior to the adoption of rules under 87-5-904.

(4) The oversight team shall seek a depredation order from the United States fish and wildlife service under the Migratory Bird Treaty Act of 1918, as necessary, to control common raven (Corvus corax) or black-billed magpie (Pica hudsonia) to reduce depredation on sage grouse populations and their nests.

History: **En. Sec. 6, Ch. 445, L. 2015; amd. Sec. 4, Ch. 267, L. 2019; Sec. 76-22-105, MCA 2019; redes. 87-5-905 by Sec. 3, Ch. 326, L. 2021.**

87-5-906 through 87-5-908 reserved.

87-5-909. Sage grouse stewardship account. (1) There is a sage grouse stewardship account in the state special revenue fund established in 17-2-102. Money deposited in the account is statutorily appropriated, as provided in 17-7-502, and, [except as provided in subsection (8),] must be used for the administration of and pursuant to the provisions of this part to maintain, enhance, restore, expand, or benefit sage grouse habitat and populations for the heritage of Montana and its people.

(2) The following funds must be deposited in the account:

(a) money received by the department in the form of grants, gifts, transfers, bequests, payments for credits or financial contributions made pursuant to 87-5-911, and donations, including donations limited in their purpose by the grantor, or appropriations from any source intended to be used for the purposes of this account; and

(b) any interest or income earned on the account.

(3) Subject to subsections (4), (5), [and (8),] the department shall make disbursements from the account to projects approved by the oversight team to receive grants.

(4) The majority of the funds in the account may not be disbursed before the habitat quantification tool has been adopted. The habitat quantification tool must be applied to any project funded after the habitat quantification tool has been adopted. The majority of the account funds must be awarded to projects that generate credits that are available for compensatory mitigation under 87-5-911. When selecting projects to receive funds, the oversight team shall prioritize projects that maximize the amount of credits generated per dollars of funds awarded.

(5) Money deposited in the account may not be used:

(a) for fee simple acquisition of private land;

(b) to purchase water rights;

(c) to purchase a lease or conservation easement that requires recreational access or prohibits hunting, fishing, or trapping as part of its terms; or

(d) to allow the release of any species listed under 87-5-107 or the federal Endangered Species Act, 16 U.S.C. 1531, et seq.

(6) Up to $25,000 may be paid from the account in each fiscal year for costs associated with meetings of the oversight team.

(7) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account.

(8) [At the end of each calendar year, the oversight team shall:

(a) conduct an audit of credits and debits as determined by the habitat quantification tool as used in compensatory mitigation pursuant to 87-5-911;

(b) ensure the balance of credits and debits determined as provided in subsection (8)(a) results in no net loss of habitat; and

(c) direct the department to transfer up to 10% of any surplus balance calculated according to subsection (8)(b) to the state general fund until the total amount of transfers made pursuant to this subsection (8)(c) equals $10 million.] *(Bracketed language terminates on occurrence of contingency—sec. 4, Ch. 285, L. 2021; subsection (6) replaced with "Administrative costs paid from the account are limited to $400,000 in each fiscal year" on occurrence of contingency—sec. 5, Ch. 326, L. 2021.)*

History: **En. Sec. 7, Ch. 445, L. 2015; amd. Secs. 4, 5, Ch. 360, L. 2017; amd. Sec. 1, Ch. 285, L. 2021; amd. Sec. 2, Ch. 326, L. 2021; Sec. 76-22-109, MCA 2019; redes. 87-5-909 by Sec. 3, Ch. 326, L. 2021.**

Compiler's Comments

Contingent Termination: Section 4, Ch. 285, L. 2021, provided: "[This act] terminates on the date that the director of the office of budget and program planning certifies to the code commissioner that $10 million has been transferred to the state general fund from the sage grouse stewardship account pursuant to 76-22-109(8) [renumbered 87-5-909]."

Contingent Termination: Section 5, Ch. 326, L. 2021, provided: "(1) If the department of fish, wildlife, and parks and the department of natural resources and conservation do not sign an agreement pursuant to [section 1] [not codified] by [the effective date of this act] [July 1, 2021], then [sections 1 and 2] [not codified and 87-5-909] are void.

(2) If an agreement between the department of fish, wildlife, and parks and the department of natural resources and conservation pursuant to [section 1] [not codified] is terminated prior to the expiration date of the agreement, then [sections 1 and 2] [not codified and 87-5-909] are void.

(3) If the department of fish, wildlife, and parks and the department of natural resources and conservation do not enter into a renewal agreement prior to the expiration date of an agreement, then [sections 1 and 2] [not codified and 87-5-909] are void on the expiration date of the agreement.

(4) If a court of competent jurisdiction determines that an agreement entered into pursuant to [section 1] [not codified] is invalid, then [sections 1 and 2] [not codified and 87-5-909] are void on the date the court's judgment is final.

(5) If the department of fish, wildlife, and parks receives written notice from the United States fish and wildlife service that an agreement entered into pursuant to [section 1] [not codified] will result in a loss of federal fish and wildlife funds being disbursed to the department of fish, wildlife, and parks, then [sections 1 and 2] [not codified and 87-5-909] are void.

(6) The department of fish, wildlife, and parks shall notify the code commissioner of the occurrence of any contingency provided for in this section." The contingency provided for in subsection (1) did not occur. On May 21, 2021, the department of fish, wildlife, and parks and the department of natural resources and conservation entered into a memorandum of understanding.

87-5-910. Grants — eligibility. (1) Subject to the provisions of 87-5-912, to be eligible to receive funds pursuant to this part, a proposed project must maintain, enhance, restore, expand, or benefit sage grouse habitat and populations for the heritage of Montana and its people through voluntary, incentive-based efforts, including:

(a) reduction of conifer encroachment;

(b) reduction of the spread of invasive weeds that harm sagebrush health or sage grouse habitat;

(c) maintenance, restoration, or improvement of sagebrush health or quality;

(d) purchase or acquisition of leases, term conservation easements, or permanent conservation easements that conserve or maintain sage grouse habitat, protect grazing lands, or conserve sage grouse populations;

(e) incentives to reduce the conversion of grazing land to cropland;

(f) restoration of cropland to grazing land;

(g) modification of fire management to conserve sage grouse habitat and populations;

(h) demarcation of fences to reduce sage grouse collisions;

(i) reduction of unnatural perching platforms for raptors;

(j) reduction of unnatural safe havens for predators;

(k) sage grouse habitat enhancement that provides project developers the ability to use improved habitat for compensatory mitigation under 87-5-911;

(l) establishment of a habitat exchange to develop and market credits consistent with the purposes of this part. The habitat exchange must be authorized by the United States fish and wildlife service and must use the habitat quantification tool to quantify and calculate the value of credits and debits. Funds may be allocated to a habitat exchange:

(i) if the funds are used:

(A) to create and market credits in a manner consistent with the habitat quantification tool;

(B) for operational purposes, including monitoring the effectiveness of projects; or

(C) for costs associated with establishing the habitat exchange; and

(ii) if the habitat exchange reimburses the state for its proportionate share of proceeds generated from the sale of credits created with funds distributed pursuant to this part. Any proceeds received by the state pursuant to this subsection (1)(l)(ii) must be deposited in the sage grouse stewardship account established in 87-5-909 and must be used only to acquire additional credits or for operational purposes, including monitoring the long-term effectiveness of compensatory mitigation projects.

(m) other project proposals that the oversight team determines are consistent with the purposes of this part.

(2) Projects proposed by grant applicants may involve land owned by multiple landowners, including state and federal land, provided that the majority of the involved acres are privately held and that the proposed project benefits sage grouse across all of the land included in the project.

(3) Grants may be awarded only to organizations and agencies that hold and maintain conservation easements or leases or that are directly involved in sage grouse habitat mitigation and enhancement activities approved by the oversight team.

(4) Grants may not be used to supplement or replace the operating budget of an agency or organization except for budget items that directly relate to the purposes of the grant.

(5) If a grant is awarded to a proposed project that uses matching funds from a source that prohibits the generation of credits for compensatory mitigation, the oversight team, when possible, shall allocate the credits generated by the proposed project on a pro rata basis and make available for compensatory mitigation under 87-5-911 only those credits attributable to funds awarded pursuant to this section and any unrestricted matching funds.

History: En. Sec. 8, Ch. 445, L. 2015; amd. Sec. 2, Ch. 311, L. 2017; Sec. 76-22-110, MCA 2019; redes. 87-5-910 by Sec. 3, Ch. 326, L. 2021.

87-5-911. Compensatory mitigation — findings. (1) The legislature finds that allowing a project developer to provide compensatory mitigation for the debits of a project is consistent with the purpose of incentivizing voluntary conservation measures for sage grouse habitat and populations. The project developer may provide compensatory mitigation by:

(a) using the habitat quantification tool to calculate the debits attributable to the project; and

(b) under a mitigation plan approved by the oversight team, offsetting those debits in whole or in part by:

(i) purchasing an equal number of credits from a habitat exchange authorized by the United States fish and wildlife service or from the available credits tracked by the oversight team pursuant to 87-5-904. Payments received for credits tracked by the oversight team must be deposited in the sage grouse stewardship account established in 87-5-909.

(ii) if sufficient conservation credits are unavailable for purchase, making a financial contribution to the sage grouse stewardship account established in 87-5-909 that is equal to the average cost of the credits that would otherwise be required;

(iii) providing funds to establish a habitat exchange or finance a conservation project for the purpose of creating credits to offset debits. However, the funds may not be used to subsidize mitigation by or decrease the mitigation obligations of any party involved in the project.

(iv) undertaking other mitigation options identified and approved by the oversight team, including but not limited to sage grouse habitat enhancement, participation in a conservation bank, or funding stand-alone mitigation actions.

(2) All mitigation undertaken pursuant to this section must be taken in consideration of applicable United States fish and wildlife service sage grouse policies, state law, and any rules adopted pursuant to this part.

(3) A mitigation action taken under this section must be conducted within general habitat, core areas, or connectivity areas.

(4) A project developer may submit alternative locations for a project to compare the compensatory mitigation requirements of each and choose which alternative to develop based upon that information.

History: En. Sec. 9, Ch. 445, L. 2015; amd. Sec. 3, Ch. 311, L. 2017; amd. Sec. 5, Ch. 267, L. 2019; Sec. 76-22-111, MCA 2019; redes. 87-5-911 by Sec. 3, Ch. 326, L. 2021.

87-5-912. Leases and conservation easements. A lease or conservation easement selected to receive funds pursuant to this part binds the parties involved to an agreement in which the state is a third-party beneficiary to the lease or easement with the contingent right to enforce the terms of the lease or easement if the grantee fails to do so. The agreement must provide that the lease or easement may not be transferred for value, sold, or extinguished without consent of the department. The state may take legal action to enforce the terms of the lease or easement or to recover from the proceeds of the transfer for value, sale, or extinguishment the state's pro rata share of the proceeds based on the funds the state provided pursuant to this part for the creation of the lease or easement.

History: **En. Sec. 10, Ch. 445, L. 2015; Sec. 76-22-112, MCA 2019; redes. 87-5-912 by Sec. 3, Ch. 326, L. 2021.**

Cross-References

Conservation easements, Title 76, ch. 6, part 2.

87-5-913. Real property. Real property conveyed by fee simple title to the state under this part must be administered by the department pursuant to Title 77.

History: **En. Sec. 11, Ch. 445, L. 2015; Sec. 76-22-113, MCA 2019; redes. 87-5-913 by Sec. 3, Ch. 326, L. 2021.**

Cross-References

Fee simple, 70-15-203.
Administration of state lands, Title 77, ch. 1.

87-5-914. Application to mineral estates. No provision of this part may be construed to alter Montana law regarding the primacy of the mineral estate, to limit access to the mineral estate, or to limit development of the mineral estate.

History: **En. Sec. 12, Ch. 445, L. 2015; Sec. 76-22-114, MCA 2019; redes. 87-5-914 by Sec. 3, Ch. 326, L. 2021.**

87-5-915. Existing land uses and activities exempt. (1) Existing land uses and activities are recognized and respected, and those uses and activities, including those authorized by permit but not yet conducted, that existed as of September 8, 2015, may not be managed under the stipulations of a sage grouse conservation strategy adopted by the governor through executive order or a policy, rule, or regulation adopted by the oversight team. Those existing land uses and activities may continue within an existing defined project boundary even if they exceed the stipulations of those documents. However, permitting agencies shall apply seasonal use restrictions, as necessary, for discretionary activities at existing land use sites.

(2) For the purposes of this section, the term:

(a) "defined project boundary" includes but is not limited to a right-of-way, easement corridor, recognized oil and gas unit, drilling and spacing unit, mine plan, and subdivision plat; and

(b) "existing land uses and activities" means those uses and activities that require a permit or other authorization from a state agency to be conducted and includes but is not limited to railroads, oil and gas, mining, agriculture, processing facilities, power lines, telecommunications facilities, including wire and fiber optic cable, housing, and operations and maintenance activities of existing energy systems that occur within a defined project boundary.

History: **En. Sec. 1, Ch. 267, L. 2019; Sec. 76-22-115, MCA 2019; redes. 87-5-915 by Sec. 3, Ch. 326, L. 2021.**

87-5-916. Compensatory mitigation reduction or waiver. (1) Except as provided in subsection (3), the oversight team shall consider on a case-by-case basis requests for a reduction in or waiver of compensatory mitigation based upon an assessment including but not limited to the following:

(a) a project that is located at least six-tenths of a mile from the center of an active lek but for which it is economically infeasible to be located more than 2 miles from the center of an active lek;

(b) the economic benefit to the local community and the project developer;

(c) whether the project is undertaken and completed outside of the sage grouse mating season; or

(d) whether the project involves one-time construction and does not require ongoing disturbance once completed, except for occasional routine maintenance of existing facilities.

(2) The oversight team shall provide a summary of the reasons why a reduction in or waiver of compensatory mitigation is approved or denied.

(3) Compensatory mitigation may be waived for opencut operations located outside of core areas and at least six-tenths of a mile from the center of an active lek if the permit pursuant to 82-4-431 is held by a county, city, or town in the state.

History: **En. Sec. 2, Ch. 267, L. 2019; Sec. 76-22-116, MCA 2019; redes. 87-5-916 by Sec. 3, Ch. 326, L. 2021; amd. Sec. 1, Ch. 428, L. 2021.**

87-5-917. Operations and maintenance exempt. (1) Permitting and authorizing agencies and the oversight team shall cooperate to designate as exempt from the habitat quantification tool certain operations and maintenance activities that require a permit or other authorization from a state agency.

(2) Operations and maintenance activities that are exempt from the habitat quantification tool pursuant to subsection (1) may still be subject to stipulations of a sage grouse conservation strategy adopted by the governor through executive order or a policy, rule, or regulation adopted by the oversight team.

History: **En. Sec. 3, Ch. 267, L. 2019; Sec. 76-22-117, MCA 2019; redes. 87-5-917 by Sec. 3, Ch. 326, L. 2021.**

87-5-918. Reporting. (1) The oversight team shall report to the governor regularly and provide an annual report to the governor, the environmental quality council in accordance with 5-11-210, the board of land commissioners, and the county commissions in the counties where projects were funded pursuant to this part. The annual report must include information on activities undertaken pursuant to this part, including but not limited to:

(a) any appropriation, grant, gift, transfer, bequest, or donation received, including interest in real property;

(b) each grant awarded and the details of each grant's status and results; and

(c) any compensatory mitigation activities.

(2) The oversight team shall annually report to the environmental quality council in accordance with 5-11-210 the findings of its review of staffing needs to effectively implement this part, as well as the costs and benefits of doing so, conducted pursuant to 87-5-905(1)(j).

History: **En. Sec. 13, Ch. 445, L. 2015; amd. Sec. 6, Ch. 267, L. 2019; amd. Sec. 106, Ch. 261, L. 2021; Sec. 76-22-118, MCA 2019; redes. 87-5-918 by Sec. 3, Ch. 326, L. 2021.**

Cross-References

Board of land commissioners, Art. X, sec. 4, Mont. Const.

Environmental quality council, Title 5, ch. 16.

CHAPTER 6
FISH AND WILDLIFE CRIMINAL PROVISIONS

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87-6-905. Finding required for restitution.
87-6-906. Restitution for illegal killing, possession, or waste of certain wildlife.
87-6-907. Restitution for illegal killing, possession, or waste of trophy wildlife.
87-6-908. Payment — penalty for nonpayment of restitution.
87-6-909 through 87-6-913 reserved.
87-6-914. Disposition of proceeds from restitution.
87-6-915. Remedial hunter education program — sentencing.
87-6-916. Costs of imprisonment.
87-6-917. Privileges of juveniles.

87-6-918. Restriction on special application or entry when ordered to pay restitution.
87-6-919. Suspension of privileges for failure to comply with citation, sentence, or administrative suspension.
87-6-920. Forfeiture of license or permit for littering.
87-6-921. Revocation of exception.
87-6-922. Notification of loss of privileges — reinstatement and revocation.
87-6-923. Suspension by administrative authority — notice and surrender of license or permit.

Part 1
General Provisions

87-6-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Alternative livestock" means a privately owned caribou, white-tailed deer, mule deer, elk, moose, antelope, mountain sheep, or mountain goat indigenous to the state of Montana, a privately owned reindeer, or any other cloven-hoofed ungulate as classified by the department. Black bear and mountain lion must be regulated pursuant to Title 87, chapter 4, part 8.

(2) "Alternative livestock ranch" means the enclosed land area upon which alternative livestock may be kept for purposes of obtaining, rearing in captivity, keeping, or selling alternative livestock or parts of alternative livestock, as authorized under Title 87, chapter 4, part 4.

(3) "Aircraft" means any manned or unmanned aerial vehicle or device that is used or intended to be used for flight in the air.

(4) (a) "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds.

(b) The term does not include:

(i) decoys, silhouettes, or other replicas of wildlife body forms;

(ii) scents used only to mask human odor; or

(iii) types of scents that are approved by the commission for attracting game animals or game birds.

(5) "Closed season" means the time during which game birds, fish, game animals, and fur-bearing animals may not be lawfully taken.

(6) "Cloven-hoofed ungulate" means an animal of the order Artiodactyla, except a member of the families Suidae, Camelidae, or Hippopotamidae. The term does not include domestic pigs, domestic cows, domestic yaks, domestic sheep, domestic goats that are not naturally occurring in the wild in their country of origin, or bison.

(7) "Conviction" means a judgment or sentence entered following a guilty plea, a nolo contendere plea, a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury, or a forfeiture of bail or collateral deposited to secure the person's appearance in court that has not been vacated.

(8) "Field trial" has the meaning provided in 87-3-601.

(9) "Fishing" means to take or harvest fish or the act of a person possessing any instrument, article, or substance for the purpose of taking or harvesting fish in any location that a fish might inhabit.

(10) (a) "Fur dealer" means a person engaging in, carrying on, or conducting wholly or in part the business of buying or selling, trading, or dealing within the state of Montana in the skins or pelts of fur-bearing animals or predatory animals.

(b) If a fur dealer resides in Montana or if the fur dealer's principal place of business is within the state of Montana, the fur dealer is considered a resident fur dealer. All other fur dealers are considered nonresident fur dealers.

(11) "Fur farm" means enclosed land on which furbearers are kept for purposes of obtaining, rearing in captivity, keeping, and selling furbearers or parts of furbearers.

(12) (a) "Fur-bearing animal" or "furbearer" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

(b) As used in Title 87, chapter 4, part 10, "furbearer" does not include fox or mink.

(13) "Game animal" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

(14) "Game fish" means all species of the family Salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus Stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus Esox (northern pike, pickerel, and muskellunge); all species of the genus Micropterus (bass); all species of the genus Polyodon (paddlefish); all species of the family Acipenseridae (sturgeon); all species of the genus Lota (burbot or ling); the species Perca flavescens (yellow perch); all species of the genus Pomoxis (crappie); and the species Ictalurus punctatus (channel catfish).

(15) "Hunt" means to pursue, shoot, wound, take, harvest, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, taking, harvesting, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take or harvest by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

(16) "Knowingly" has the meaning provided in 45-2-101.

(17) "Livestock" includes ostriches, rheas, and emus.

(18) "Migratory game bird" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; Wilson's snipes or jacksnipes; and mourning doves.

(19) "Negligently" has the meaning provided in 45-2-101.

(20) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

(21) "Open season" means the time during which game birds, fish, and game and fur-bearing animals may be lawfully taken.

(22) "Participating state" means any state that enacts legislation to become a member of the Interstate Wildlife Violator Compact.

(23) "Person" means an individual, association, partnership, and corporation.

(24) "Possession" has the meaning provided in 45-2-101.

(25) "Predatory animal" means coyote, weasel, skunk, and civet cat.

(26) "Purposely" has the meaning provided in 45-2-101.

(27) "Raptor" means all birds of the orders Falconiformes and Strigiformes, commonly called falcons, hawks, eagles, ospreys, and owls.

(28) "Resident" has the meaning provided in 87-2-102.

(29) "Roadside menagerie" means any place where one or more wild animals are kept in captivity for the evident purpose of exhibition or attracting trade, on or off the facility premises. It does not include the exhibition of any animal by an educational institution or by a traveling theatrical exhibition or circus based outside of Montana.

(30) "Sale" means a contract by which a person:

(a) transfers an interest in either game or fish for a price; or

(b) transfers, barters, or exchanges an interest either in game or fish for an article or thing of value.

(31) "Site of the kill" means the location where a game animal or game bird expires and the person responsible for the death takes physical possession of the carcass.

(32) "Supplemental feed attractant" means any food, garbage, or other attractant for game animals. The term does not include growing plants or plants harvested for the feeding of livestock.

(33) "Taxidermist" means a person who conducts a business for the purpose of mounting, preserving, or preparing all or part of the dead bodies of any wildlife.

(34) "Trap" means to take or harvest or participate in the taking or harvesting of any wildlife protected by state law by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

(35) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

(36) "Wild animal" means an animal that is wild by nature as distinguished from common domestic animals, whether the animal was bred or reared in captivity, and includes birds and reptiles.

(37) "Wild animal menagerie" means any place where one or more bears or large cats, including cougars, lions, tigers, jaguars, leopards, pumas, cheetahs, ocelots, and hybrids of those large cats, are kept in captivity for use other than public exhibition.

(38) "Wild buffalo or bison" or "wild buffalo" means a bison that:

(a) has not been reduced to captivity;

(b) has never been subject to the per capita fee under 15-24-921;

(c) has never been owned by a person; and

(d) is not the offspring of a bison that has been subject to the per capita fee under 15-24-921.

(39) "Wildlife sanctuary" means a facility organized as a Montana nonprofit corporation pursuant to Title 35, chapter 2, or in good standing with and accredited by the American sanctuary association or the global federation of animal sanctuaries for the purpose of providing homes for nonreleasable wild animals. Accreditation and good standing must be proven with a copy of an accreditation report completed as required by the accrediting organization.

(40) "Zoo" means any zoological garden chartered as a nonprofit corporation by the state or in good standing with and accredited by the association of zoos and aquariums or the zoological association of America for the purpose of exhibiting wild animals for public viewing. Accreditation and good standing must be proven with a copy of an accreditation report completed as required by the accrediting organization.

History: En. Sec. 1, Ch. 258, L. 2011; amd. Sec. 122, Ch. 258, L. 2011; amd. Sec. 3, Ch. 105, L. 2015; amd. Sec. 1, Ch. 149, L. 2015; amd. Sec. 5, Ch. 103, L. 2019; amd. Sec. 7, Ch. 211, L. 2021; amd. Sec. 4, Ch. 507, L. 2021; amd. Sec. 1, Ch. 317, L. 2023.

87-6-102. Designation of violations. A person who purposely, knowingly, or negligently violates a provision of this title or any other state law pertaining to fish and game is guilty of a misdemeanor unless a felony is expressly provided by law.

History: En. Sec. 2, Ch. 258, L. 2011.

Cross-References

Misdemeanor penalty, 46-18-212.

Felony penalty, 46-18-213.

Unlawful disposition of dead animals, 75-10-213.

Taking of publicly owned wild buffalo or wild bison that are present on private property — notice — supplemental feeding — penalty, 81-2-121.

Penalty for violation of importation permit and health certificate requirements, 81-2-708.

Definitions of knowingly, negligently, and purposely, 87-6-101.

Unlawful possession of hunting or fishing license or permit, 87-6-305.

87-6-103. Fish and game violation as inchoate offense. Any violation of this title is an offense for purposes of the crimes of attempt, solicitation, and conspiracy set out in Title 45, chapter 4.

History: En. Sec. 3, Ch. 258, L. 2011.

87-6-104. Fish and game code not to supersede criminal code — statute of limitations. (1) The penalty provisions of this title are intended to supplement but not supersede the provisions of Title 45. Nothing in this title limits the prosecution of any conduct defined as an offense in Title 45.

(2) Unless otherwise provided, the general time limitations for prosecutions for violations of any offense under this title are those time limitations specified in 45-1-205.

History: En. Sec. 4, Ch. 258, L. 2011.

87-6-105. Repealed. Sec. 13, Ch. 281, L. 2021.

History: En. Sec. 5, Ch. 258, L. 2011.

87-6-106. Lawful taking to protect livestock or person — findings.(1) A person may kill or attempt to kill a wolf or mountain lion that is in the act of attacking or killing a domestic dog.

(2) A person who, under this section, takes wildlife protected by this title shall notify the department within 72 hours and shall surrender or arrange to surrender the wildlife to the department.

(3) In accordance with the rights conferred on Montana citizens pursuant to Article II, sections 3 and 12, of the Montana constitution, the legislature finds the act of a grizzly bear attacking or killing a person is an absolute defense against a person who takes a grizzly bear in accordance with this section being charged with a crime under Montana law. Grizzly bears threatening, attacking, or killing livestock may only be taken as provided in 87-5-301.

(4) When a grizzly bear poses a threat to a person through consistent presence or proximity to people or inhabited dwellings, the person may contact the department. If, on investigation, the department finds the grizzly bear is a threat, the department may control, trap, or remove the grizzly bear or issue a permit to the person to kill the grizzly bear to mitigate the threat to human safety.

(5) As used in this section, "livestock" means cattle, swine, horses, mules, sheep, goats, llamas, donkeys, and livestock guard dogs.

History: En. Sec. 6, Ch. 258, L. 2011; amd. Sec. 1, Ch. 485, L. 2021; amd. Sec. 2, Ch. 670, L. 2023.

87-6-107. Unlawful harassment of game animals and game birds with vehicle or device. (1) A person may not concentrate, drive, rally, stir up, run, molest, flush, herd, chase, harass, or impede the movement of or attempt to concentrate, drive, rally, stir up, run, molest, flush, herd, chase, harass, or impede the movement of a game animal or game bird from or with the use or aid of a self-propelled, motor-driven, or drawn vehicle or device, including aircraft. This section does not apply to landowners and their authorized agents engaged in the immediate protection of that landowner's property.

(2) The following penalties apply for a violation of this section:

(a) A person convicted of or who forfeits bond or bail after being charged with a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(b) A person convicted of or who forfeits bond or bail after being charged with a second or subsequent violation of this section within 5 years shall be fined not less than $500 or more than $1,000 or be imprisoned for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state for 24 months from the date of conviction or forfeiture of bond or bail unless the court imposes a longer period.

History: En. Sec. 15, Ch. 552, L. 2021; amd. Sec. 2, Ch. 317, L. 2023.

Part 2
General Hunting, Fishing, and Trapping Offenses — Related Offenses

87-6-201. Violation of commission or department order or rule. A person who purposely, knowingly, or negligently violates an order or rule of the commission or department shall be fined not less than $50 or more than $500. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

History: En. Sec. 7, Ch. 258, L. 2011.

87-6-202. Unlawful possession, shipping, or transportation of game fish, bird, game animal, or fur-bearing animal. (1) A person may not possess, ship, or transport all or part of any game fish, bird, game animal, or fur-bearing animal that was unlawfully killed, captured, or taken, whether killed, captured, or taken in Montana or outside of Montana.

(2) This section does not prohibit the possession, shipping, or transportation of:

(a) hides, heads, or mounts of lawfully killed, captured, or taken game fish, birds, game animals, or fur-bearing animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided by federal law;

(b) naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(c) the bones of an elk, antelope, moose, or deer that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(d) captive-reared migratory waterfowl; or

(e) salvaged antelope, deer, elk, or moose subject to 87-3-145.

(3) A person may not possess, ship, or transport live fish away from the body of water in which the fish were taken except:

(a) as provided in Title 87, chapter 4, part 6, or as specifically permitted by the laws of this state;

(b) fish species approved by the commission for use as live bait and subject to any restrictions imposed by the commission; or

(c) within the boundaries of the eastern Montana fishing district, as established by commission regulations.

(4) Except as provided in 87-3-310, possession of all or part of a dead game fish, bird, game animal, or fur-bearing animal is prima facie evidence that the person or persons in whose possession the fish, bird, or animal is found killed, captured, or took the fish, bird, or animal.

(5) The value of a game fish, bird, game animal, or fur-bearing animal that is unlawfully possessed, shipped, or transported must be determined from the schedules of restitution values in 87-6-906 and 87-6-907. The value of game fish, birds, game animals, or fur-bearing animals that are unlawfully possessed, shipped, or transported pursuant to a common scheme, as defined in 45-2-101, or as part of the same transaction, as defined in 46-1-202, may be aggregated in determining the value.

(6) The following penalties apply for a violation of this section:

(a) If a person is convicted or forfeits bond or bail after being charged with unlawful possession, shipping, or transportation of a game fish or bird and if the value of all or part of the game fish or bird or combination thereof does not exceed $1,000, the person shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(b) If a person is convicted or forfeits bond or bail after being charged with unlawful possession or transportation of a mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear or any part of these animals and if the value of all or part of the animal or combination thereof does not exceed $1,000, the person shall be fined not less than $500 or more than $2,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

(c) If a person is convicted or forfeits bond or bail after being charged with unlawful possession or transportation of a deer, antelope, elk, or mountain lion or any part of these animals and if the value of all or part of the animal or combination thereof does not exceed $1,000, the person shall be fined not less than $300 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period.

(d) If a person is convicted or forfeits bond or bail after being charged with unlawful shipping of a mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, grizzly bear, deer, antelope, elk, or mountain lion or any part of these animals and if the value of all or part of the animal or combination thereof does not exceed $1,000, the person shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(e) If a person is convicted or forfeits bond or bail after being charged with unlawful possession, shipping, or transportation of a fur-bearing animal or pelt of a fur-bearing animal and if the value of all or part of the animal or combination thereof does not exceed $1,000, the person shall be fined not less than $100 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated.

(f) If a person is convicted under this section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof exceeds $1,000, the person shall be fined not more than $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for not less than 3 years up to a revocation for life from the date of conviction.

(7) A person convicted of unlawful possession of more than double the legal bag limit may be subject to the additional penalties provided in 87-6-901.

(8) As used in this section:

(a) "lawfully killed, captured, or taken" means killed, captured, or taken in conformance with this title, the regulations adopted by the commission, and the rules adopted by the department under authority of this title;

(b) "possess" includes the act of killing, capturing, or taking a game fish, bird, game animal, or fur-bearing animal regardless of whether the person takes or retains physical possession of the fish, bird, or animal; and

(c) "unlawfully killed, captured, or taken" means not lawfully killed, captured, or taken.

(9) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907.

History: En. Sec. 8, Ch. 258, L. 2011; amd. Sec. 123, Ch. 258, L. 2011; amd. Sec. 3, Ch. 137, L. 2013; amd. Sec. 5, Ch. 238, L. 2019; amd. Sec. 1, Ch. 70, L. 2021; amd. Sec. 4, Ch. 39, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 39, L. 2025. Amendment effective April 3, 2025.

Cross-References

Second offense penalties, 87-6-901.
Restitution for illegal killing, possession, or waste of certain wildlife, 87-6-906.
Restitution for illegal killing, possession, or waste of trophy wildlife, 87-6-907.

87-6-203. Unlawful taking, killing, trapping, labeling, or packaging of fur-bearing animal or pelt. (1) A person convicted of purposely, knowingly, or negligently taking, killing, trapping, labeling, or packaging a fur-bearing animal or the pelt of a fur-bearing animal in violation of any provision of this title shall be fined not less than $100 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated.

(2) A person convicted of unlawful taking of more than double the legal bag limit of a fur-bearing animal may be subject to the additional penalties provided in 87-6-901 and 87-6-902.

(3) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 and 87-6-906.

History: En. Sec. 9, Ch. 258, L. 2011.

Cross-References

Second offense penalties, 87-6-901.
Third offense penalties, 87-6-902.
Restitution for illegal killing, possession, or waste of certain wildlife, 87-6-906.
Restitution for illegal killing, possession, or waste of trophy wildlife, 87-6-907.

87-6-204. Hunting or fishing during closed season. (1) A person may not hunt or attempt to hunt:

(a) any game animal or game bird or fish for or catch any fish during the closed season on any species of game animal, game bird, or fish; or

(b) an upland game bird until the commission provides an open season on that upland game bird. The open season on mourning doves is restricted to the open season on upland game birds.

(2) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A person convicted of hunting during a closed season may be subject to the additional penalties provided in 87-6-901 and 87-6-902.

History: En. Sec. 10, Ch. 258, L. 2011.

Cross-References

Trapping during closed season — exception, 87-6-602.
Second offense penalties, 87-6-901.
Third offense penalties, 87-6-902.

87-6-205. Waste of game animal, game bird, or game fish. (1) Except as provided in subsection (3), a person responsible for the death of any game animal, game bird, or game fish suitable for food may not purposely or knowingly waste the game by:

(a) detaching or removing only the head, hide, antlers, tusks, or teeth or any or all of these parts from the carcass of a game animal;

(b) transporting, hanging, or storing the carcass in a manner that renders it unfit for human consumption; or

(c) abandoning the carcass of a game animal or any portion of the carcass suitable for food in the field.

(2) A person in possession of a game animal or game animal parts, a game bird, or a game fish suitable for food may not purposely or knowingly waste the game by:

(a) transporting, storing, or hanging the animal, bird, or fish in a manner that renders it unfit for human consumption; or

(b) disposing of or abandoning any portion of the animal, bird, or fish that is suitable for food. For migratory birds, "suitable for food" means the breast meat.

(3) A person responsible for the death of a mountain lion, except as provided in 87-6-106, may not abandon the head or hide in the field.

(4) A person responsible for the death of a grizzly bear wastes the game if the person abandons the head or hide or any parts required by department or commission regulation for scientific purposes pursuant to 87-3-131.

(5) For the purposes of this section, the meat of a grizzly bear or a black bear that is found to be infected with trichinosis is not considered to be suitable for food.

(6) A person convicted of a violation of this section may be fined not less than $50 or more than $1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall:

(a) forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period; and

(b) pay restitution pursuant to 87-6-905 through 87-6-907.

(7) A person convicted of waste of game by abandonment in the field may be subject to the additional penalties provided in 87-6-901.

(8) Regulations adopted pursuant to this section for game birds may not be more restrictive than comparable federal regulations, except as provided in subsection (2)(b).

History: En. Sec. 11, Ch. 258, L. 2011; amd. Sec. 124, Ch. 258, L. 2011; amd. Sec. 1, Ch. 496, L. 2021.

Cross-References

Waste of fur-bearing animal, 87-6-603.
Second offense penalties, 87-6-901.
Restitution for illegal killing, possession, or waste of certain wildlife, 87-6-906.
Restitution for illegal killing, possession, or waste of trophy wildlife, 87-6-907.

87-6-206. Unlawful sale of game fish, bird, game animal, or fur-bearing animal. (1) A person may not purposely or knowingly sell, purchase, or exchange all or part of any game fish, bird, game animal, or fur-bearing animal.

(2) The value of the game fish, bird, game animal, or fur-bearing animal must be determined from the schedules of restitution values set out in 87-6-906 and 87-6-907. The value of game fish, birds, game animals, or fur-bearing animals that are sold, purchased, or exchanged pursuant to a common scheme, as defined in 45-2-101, or as part of the same transaction, as defined in 46-1-202, may be aggregated in determining the value.

(3) This section does not prohibit the:

(a) sale, purchase, or exchange of hides, heads, or mounts of game fish, birds, game animals, or fur-bearing animals that have been lawfully killed, captured, or taken, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided by federal law;

(b) sale, purchase, or exchange of naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(c) sale, purchase, or exchange of the bones of an elk, antelope, moose, or deer that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed; or

(d) sale, purchase, or exchange of captive-reared migratory waterfowl.

(4) If a person is convicted or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof does not exceed $1,000, then the person shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for a period set by the court.

(5) If a person is convicted or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof exceeds $1,000, then the person shall be fined not more than $50,000 or be imprisoned in the state prison for not more than 5 years, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for not less than 3 years up to a revocation for life from the date of conviction.

(6) As used in this section:

(a) "lawfully killed, captured, or taken" means killed, captured, or taken in conformance with this title, the regulations adopted by the commission, and the rules adopted by the department under authority of this title; and

(b) "unlawfully killed, captured, or taken" means not lawfully killed, captured, or taken.

History: En. Sec. 12, Ch. 258, L. 2011; amd. Sec. 125, Ch. 258, L. 2011; amd. Sec. 5, Ch. 39, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 39, L. 2025. Amendment effective April 3, 2025.

87-6-207. Unlawful use of boat. (1) A person may not use a motorboat or a sailboat as defined in 61-1-101 for the purpose of killing, capturing, taking, pursuing, concentrating, driving, or stirring up any upland game bird, migratory bird, game animal, or fur-bearing animal until the motor is shut off or the sails are furled and the progress of the vessel has ceased.

(2) The following penalties apply for a violation of this section:

(a) Unless otherwise provided in this subsection (2), a person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(b) If a person is convicted or forfeits bond or bail after being charged with unlawful use of a boat to kill or take a mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear, the person shall be fined not less than $500 or more than $2,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

(c) If a person is convicted or forfeits bond or bail after being charged with unlawful use of a boat to kill or take a deer, antelope, elk, or mountain lion, the person shall be fined not less than $300 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period.

(d) If a person is convicted or forfeits bond or bail after being charged with unlawful use of a boat to kill or take a fur-bearing animal, the person shall be fined not less than $100 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated.

History: **En. Sec. 14, Ch. 258, L. 2011; amd. Sec. 2, Ch. 355, L. 2013; amd. Sec. 16, Ch. 552, L. 2021; amd. Sec. 63, Ch. 47, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 63, Ch. 47, L. 2025. Amendment effective October 1, 2025.

87-6-208. Unlawful use of aircraft. (1) Except as provided in 87-3-126, a person may not:

(a) kill, take, or shoot at any game bird, game animal, or fur-bearing animal from an aircraft;

(b) use an aircraft:

(i) to spot or locate any game animal for the purpose of hunting within 24 hours after utilizing an aircraft;

(ii) to concentrate, pursue, drive, rally, or stir up a game bird, migratory bird, game animal, or fur-bearing animal; or

(iii) to intentionally interfere with the hunting of a game bird, game animal, or fur-bearing animal, including operating an aircraft in a manner that disturbs or otherwise affects the behavior of a game bird, game animal, or fur-bearing animal;

(c) land an aircraft in violation of state or federal land use travel plans while pursuing a game bird, game animal, or fur-bearing animal;

(d) land an aircraft on private property without written permission while pursuing a game bird, game animal, or fur-bearing animal; or

(e) spot or locate a game animal or fur-bearing animal and communicate the location of the game animal or fur-bearing animal to any person as an aid to hunting:

(i) while in, using, or operating an aircraft; or

(ii) within 24 hours after utilizing an aircraft.

(2) The provisions of this section do not apply:

(a) during emergency situations;

(b) when search and rescue operations are being conducted;

(c) for predator control as permitted by the department of livestock; or

(d) when supporting an agricultural operation.

(3) The following penalties apply for a violation of this section:

(a) Unless otherwise provided in this subsection (3), a person convicted of a violation of this section shall be fined not less than $300 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(b) If a person is convicted or forfeits bond or bail after being charged with unlawful use of an aircraft to kill or take a deer, elk, antelope, mountain lion, mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear, the person shall be fined not less than $500 or more than $2,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

(c) If a person is convicted or forfeits bond or bail after being charged with unlawful use of an aircraft to kill or take a fur-bearing animal, the person shall be fined not less than $100 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated.

(4) As used in this section, "aircraft" has the meaning provided in 87-6-101.

History: En. Sec. 1, Ch. 355, L. 2013; amd. Sec. 3, Ch. 317, L. 2023; amd. Sec. 2, Ch. 553, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 553, L. 2025. Amendment effective October 1, 2025.

87-6-209 through 87-6-213 reserved.

87-6-214. Unlawful contest or prize. (1) (a) Except as provided in subsections (1)(b) through (1)(d), a person, firm, or club may not offer or give a prize, gift, or anything of value in connection with or as a bag limit prize for the taking, capturing, killing, or in any manner acquiring any game, fowl, or fur-bearing animal or any bird or animal protected by law.

(b) A prize may be awarded for any one game bird or fur-bearing animal on the basis of size, quality, or rarity.

(c) A person may conduct or sponsor a contest for which the monetary prize, certificate, or award does not exceed $50 for a person who kills a game animal possessing the largest antlers or horns, carrying the greatest weight, or having the longest body or any similar contest based on the size or weight of a game animal or part of a game animal. The monetary restriction provided in this subsection (1)(c) does not apply to recognition given by a nationally established and recognized Boone and Crockett trophy institute.

(d) Reimbursements for receipts of costs incurred related to the hunting or trapping of wolves may be given to persons who lawfully harvest wolves pursuant to Title 87, chapters 1 and 2.

(2) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, on conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

History: En. Sec. 15, Ch. 258, L. 2011; amd. Sec. 1, Ch. 286, L. 2021; amd. Sec. 1, Ch. 188, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 188, L. 2025. Amendment effective October 1, 2025.

87-6-215. Harassment. (1) (a) A person may not:

(i) intentionally interfere with the lawful taking of a wild animal or fishing by another;

(ii) with intent to prevent or hinder its lawful taking or its capture, disturb a wild animal or engage in an activity or place in its way any object or substance that will tend to disturb or otherwise affect the behavior of a wild animal; or

(iii) disturb an individual engaged in the lawful taking of a wild animal or fishing with intent to prevent the taking of the animal or the capture of the fish.

(b) This subsection (1) does not:

(i) prohibit a landowner or lessee from taking reasonable measures to prevent imminent danger to domestic livestock and equipment; or

(ii) prohibit or curtail normal landowner operations or lawful uses of water.

(2) A person convicted of or who forfeits bond or bail after being charged with a violation of this section shall be fined not more than $500 or be imprisoned for not more than 30 days, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A person convicted of or who forfeits bond or bail after being charged with a second or subsequent violation of this section within 5 years shall be fined not less than $500 or more than $1,000 or be imprisoned for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state for 24 months from the date of conviction or forfeiture of bond or bail unless the court imposes a longer period.

(4) A court of general jurisdiction may enjoin conduct in violation of this section upon petition by a person affected or who reasonably may be affected by that conduct and upon a showing that the conduct is threatened or that it has occurred on a particular premises in the past and that it is not unreasonable to expect that under similar circumstances it will be repeated.

(5) As used in this section:

(a) "fishing" means the lawful means of fishing as described in 87-6-501;

(b) "taking" means the pursuit, hunting, trapping, shooting, or killing of a wild animal on land upon which the affected person has the right or privilege to pursue, hunt, trap, shoot, or kill the wild animal; and

(c) "wild animal" means a game animal, migratory game bird, upland game bird, fur-bearing animal, predatory animal, or fish.

History: En. Sec. 16, Ch. 258, L. 2011; amd. Sec. 1, Ch. 408, L. 2015.

87-6-216. Unlawful supplemental feeding — exemption. (1) Except as provided in subsection (2), a person may not provide supplemental feed attractants to game animals or wild turkeys by:

(a) purposely or knowingly attracting any cloven-hoofed ungulates, bears, mountain lions, or wild turkeys with supplemental feed attractants;

(b) after having received a previous warning, negligently failing to properly store supplemental feed attractants and allowing any cloven-hoofed ungulates, bears, mountain lions, or wild turkeys access to the supplemental feed attractants; or

(c) purposely or knowingly providing supplemental feed attractants in a manner that results in an artificial concentration of game animals or wild turkeys that may potentially contribute to the transmission of disease or that constitutes a threat to public safety.

(2) A person may provide supplemental feed to wild turkeys unless the department finds that supplemental feed harms the local population of wild turkeys or creates a public nuisance as defined in 45-8-111.

(3) A person is not subject to civil or criminal liability under this section if the person is engaged in:

(a) the normal feeding of livestock;

(b) a normal agricultural practice;

(c) cultivation of a lawn or garden;

(d) the commercial processing of garbage; or

(e) recreational feeding of birds unless, after having received a previous warning by the department, the person continues to feed birds in a manner that attracts cloven-hoofed ungulates, bears, or wild turkeys and that may contribute to the transmission of disease or constitute a threat to public safety.

(4) This section does not apply to supplemental feeding activities conducted by the department for disease control purposes.

(5) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

History: En. Sec. 17, Ch. 258, L. 2011; amd. Sec. 1, Ch. 417, L. 2017.

87-6-217. Shooting at simulated wildlife. (1) A person may not discharge a firearm or other hunting implement at a simulated wildlife decoy in violation of any state statute or commission rule regulating the hunting of the wildlife being simulated when the decoy is being used by a certified peace officer.

(2) A person convicted of a violation of this section is subject to the same penalty as prescribed for the state statute or commission rule violated during the attempted hunting of the actual wildlife being simulated. In addition, the person shall pay restitution of $50 to the department for the repair of damages to simulated wildlife decoys.

History: En. Sec. 18, Ch. 258, L. 2011.

87-6-218. Checking station offenses. (1) A person, upon the request of the director, the director's authorized representative, or any game warden, shall produce for inspection any current fish and game license or statement of possession pursuant to 87-3-310 that has been issued to the person and any game animals, birds, fish, or fur-bearing animals in the person's possession. Hunters or anglers entering or leaving areas for which checking stations have been established shall stop and report if a checking station is on the hunter's or angler's route of travel to or from the hunting or fishing area and personnel are on duty.

(2) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

History: En. Sec. 19, Ch. 258, L. 2011; amd. Sec. 6, Ch. 238, L. 2019.

87-6-219. Unlawful relocation of fish. (1) A person or firm may not:

(a) place or cause to be placed caged live fish in any of the public waters of the state of Montana, except as provided by department regulation;

(b) without written department approval, move live or dead salmonid fish or eggs from one in-state location to another when the fish or eggs are known to be infected with fish pathogens specified by the department as posing a threat to fisheries;

(c) import live salmonid fish or eggs into Montana without meeting the requirements of 87-3-221; or

(d) discard, place, or allow uncertified salmonid fish, parts, or eggs that have been transported into Montana to enter into surface waters other than sewage or disposal systems pursuant to 87-3-222(2).

(2) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

History: En. Sec. 20, Ch. 258, L. 2011.

87-6-220. Repealed. Sec. 7, Ch. 103, L. 2019.

History: En. Sec. 21, Ch. 258, L. 2011.

87-6-221. Imported urine — use or sale prohibited. (1) Except as provided in subsection (2), the use or sale of deer or elk urine to mask human odor is prohibited if the urine originated in a state or province with documented occurrences of chronic wasting disease as determined by the commission.

(2) The commission may allow deer or elk urine otherwise prohibited by subsection (1) if the deer or elk urine is produced in a facility that the commission determines:

(a) complies with a federal or a federally approved chronic wasting disease herd certification program and any federal chronic wasting disease protocols and record requirements;

(b) does not allow importation of live cervids, except in cases of catastrophic loss or herd replenishment;

(c) requires that all cervids exported from the facility be tested for chronic wasting disease upon death and the results be reported to the facility;

(d) is inspected annually by an accredited veterinarian, including inspection of the herd and applicable records; and

(e) maintains a fence at least 8 feet high around the facility and, if the facility is located within 30 miles of a confirmed positive occurrence of chronic wasting disease, is double fenced to prevent direct contact between captive and wild cervids.

(3) (a) Except as provided in subsection (3)(b), a violation of this section is a misdemeanor punishable by a fine of up to $500 for each separate offense.

(b) Through January 31, 2019, violators of this section must be issued a warning but may not be fined.

History: En. Sec. 1, Ch. 423, L. 2017.

87-6-222. Fish and wildlife location data — penalties. (1) Unless specifically authorized by the department, a person who obtains exact coordinate location data from the department may not use the data or transfer the data to another person to use in a way that harms, harasses, or kills fish or wildlife. A person who uses, transfers, or receives exact coordinate location data in violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both.

(2) Upon conviction or forfeiture of bond or bail, the person may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A person convicted under this section may be subject to the additional penalties provided in 87-6-901 through 87-6-903.

(4) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907.

History: En. Sec. 1, Ch. 259, L. 2019.

87-6-223 through 87-6-239 reserved.

87-6-240. Unlawful recovery and possession of horns and skulls from mountain sheep that died of natural causes. (1) For a mountain sheep that died of natural causes, a person may not:

(a) recover or possess a horn or horns and attached skull, or portion thereof, in violation of the provisions of 87-3-315;

(b) alter, deface, or remove a pin placed in a horn by the department;

(c) possess a horn that bears an altered, defaced, or counterfeit pin or from which a pin placed by the department was removed.

(2) (a) A person who is convicted of or who forfeits bond or bail after being charged with a violation of this section shall be:

(i) fined up to $2,000 if the violation involved a horn or horns with less than a three-fourths curl or up to $30,000 if the violation involved a horn or horns equal to or greater than a three-fourths curl;

(ii) imprisoned in the county detention center for not more than 6 months; or

(iii) both fined and imprisoned pursuant to subsections (2)(a)(i) and (2)(a)(ii).

(b) In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

History: En. Sec. 2, Ch. 244, L. 2019.

Part 3
Licensing, Tags, and Permits

87-6-301. Hunting, fishing, or trapping without license. (1) Except as provided in 87-2-311 and subsection (2) of this section, a person may not:

(a) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or fish for any fish within this state or possess within this state any game animal, game bird, fur-bearing animal, game fish, or parts of those animals or birds except as provided by law or as provided by the department;

(b) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or fish for any fish, except at the places and during the periods and in the manner established by law or as prescribed by the department;

(c) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or fish for any fish within this state or possess, sell, purchase, ship, or reship any imported or other fur-bearing animal or parts of fur-bearing animals without first having obtained a proper and valid license or permit from the department to do so;

(d) trap or attempt to trap predatory animals or nongame wildlife without a license, as prescribed in 87-2-603, if that person is not a resident; or

(e) hunt migratory game birds without first having obtained a valid migratory game bird license from the department.

(2) The provisions of this section do not require a person who accompanies a licensed disabled hunter, as authorized under 87-2-803, to be licensed in order to kill or attempt to kill a game animal that has been wounded by a disabled hunter when the disabled hunter is unable to pursue and kill the wounded game animal. However, the person must meet the qualifications for a license in the person's state of residence.

(3) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(4) A person convicted of hunting without a license may be subject to the additional penalties provided in 87-6-901 and 87-6-902.

(5) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907.

History: En. Sec. 22, Ch. 258, L. 2011; amd. Sec. 3, Ch. 316, L. 2011; amd. Sec. 32, Ch. 449, L. 2015.

Cross-References

Second offense penalties, 87-6-901.
Third offense penalties, 87-6-902.
Restitution for illegal killing, possession, or waste of certain wildlife, 87-6-906.
Restitution for illegal killing, possession, or waste of trophy wildlife, 87-6-907.

87-6-302. Unlawful procurement of license, permit, or tag. (1) A person may not:

(a) subscribe to or make any materially false statement on an application or license. Any materially false statement contained in an application renders the license issued pursuant to it void.

(b) purchase or apply for a hunting, fishing, or trapping license without first having obtained a conservation license pursuant to 87-2-201; or

(c) purposely or knowingly assist an unqualified applicant in obtaining a resident license.

(2) A license agent may not sell any hunting, fishing, or trapping license to:

(a) an applicant who fails to produce the required identification at the time of application for licensure pursuant to 87-2-106(1) and 87-2-202(1); or

(b) a person who does not present the person's conservation license at the time of application for the license.

(3) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, except as provided in subsection (4), the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license

issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(4) A person convicted under subsection (1)(a) of unlawfully procuring a replacement license, permit, or tag shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture of bond or bail unless a court imposes a longer period. For each subsequent violation, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for the same period of time imposed by the court for the person's previous violation plus an additional 24 months.

History: En. Sec. 23, Ch. 258, L. 2011; amd. Sec. 1, Ch. 116, L. 2015; amd. Sec. 19, Ch. 221, L. 2019; amd. Sec. 26, Ch. 507, L. 2023.

87-6-303. Nonresident license or permit offenses. (1) A person who is not a resident may not:

(a) apply for or purchase for a nonresident's use the following resident licenses and permits:

(i) conservation license;
(ii) hunting license or permit; or
(iii) fishing license or permit;

(b) affirm to or make a false statement to obtain a resident license.

(2) A person convicted of a violation of this section shall be fined not less than the greater of $100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than $1,000 or be imprisoned in the county jail for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 18 months.

History: En. Sec. 24, Ch. 258, L. 2011; amd. Sec. 27, Ch. 507, L. 2023.

87-6-304. License, permit, or tag offenses. (1) Except as provided in 87-6-305(2), a person may not apply for, purchase, or possess more than one license, permit, or tag of any one class or more than one special license for any one species listed in 87-2-701. This provision does not apply to Class B-4, Class B-5, or Class E-2 licenses or to licenses issued under 87-2-104(3) for game management purposes. However, when more than one license, permit, or tag is authorized by the commission, a person may not apply for, purchase, or possess more licenses, permits, or tags than are authorized.

(2) The holder of a replacement license, permit, or tag may not make the replacement license, permit, or tag available for use by another person.

(3) Except as provided in 87-6-305(2), a person to whom a license or permit has been issued may not fish, hunt for any game bird or game animal, or attempt to hunt for any fur-bearing animal in this state unless the person is carrying the required license or permit at the time.

(4) A person may not refuse to exhibit a license or permit and the identification used in purchasing a license or permit for inspection to a warden or other officer requesting to see it.

(5) A person may not at any time alter or change a license in any material manner or loan or transfer any license to another person. The person, including a minor child, to whom a license is issued shall validate the license. A person may not validate a license for a game animal killed by another person.

(6) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, except as provided in subsection (7), the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(7) A person convicted under subsection (1), (2), or (5) of unlawfully procuring, possessing, using, or transferring a replacement license, permit, or tag shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture of bond or bail unless a court imposes a longer period. For each subsequent violation, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this

state for the same period of time imposed by the court for the person's previous violation plus an additional 24 months.

History: En. Sec. 25, Ch. 258, L. 2011; amd. Sec. 2, Ch. 116, L. 2015; amd. Sec. 2, Ch. 351, L. 2019; amd. Sec. 2, Ch. 166, L. 2021; amd. Sec. 1, Ch. 46, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 46, L. 2025. Amendment effective April 3, 2025.

87-6-305. Unlawful possession of hunting or fishing license or permit. (1) Except as provided in subsection (2), a person commits the offense of unlawful possession of a hunting or fishing license or permit if the person knowingly carries or has physical control over a valid and unused:

(a) hunting license or permit issued to another person while in any location that the species to be hunted may inhabit;

(b) resident hunting license or permit or resident fishing license or permit issued to a nonresident; or

(c) hunting license or permit or fishing license or permit that was issued in violation of applicable law or rule.

(2) The prohibition in subsection (1) does not apply to a person who is carrying or has physical control over a valid and unused license or permit issued to that person's spouse or to any minor when the spouse or minor is hunting with that person. This exception also applies to a license or permit issued electronically.

(3) Except as provided in subsection (4), a person who violates this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(4) A person who violates this section while engaged in a commercial activity, such as taxidermy, meat processing, outfitting, or guiding by carrying or having physical control over three or more hunting licenses that are issued to another person or persons and that are used or intended to be used on game animals not taken by the person or persons to whom the licenses were issued or by knowingly carrying, having physical control of, or selling two or more licenses or permits that were issued in violation of applicable law or rule is guilty of a felony and upon conviction shall be fined not more than $50,000 or be imprisoned in the state prison for not more than 5 years, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and lose the privilege to hunt, fish, or trap in this state for not less than 3 years up to a revocation for life from the date of conviction.

History: En. Sec. 26, Ch. 258, L. 2011; amd. Sec. 2, Ch. 316, L. 2023; amd. Sec. 2, Ch. 46, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 46, L. 2025. Amendment effective April 3, 2025.

87-6-306. Hunting, fishing, or trapping while privileges or licenses forfeited or suspended. (1) A person may not hunt, fish, or trap while the person's license or privilege to hunt, fish, or trap in this state is forfeited for a violation of this title or any other law pertaining to fish and game in this state. A person convicted of a violation of this section may be fined not less than $500 or more than $2,000 and shall be imprisoned in the county detention center for not less than 5 days or more than 6 months.

(2) A person whose privilege to hunt, fish, or trap in this state has been suspended for a violation of fish and game law in a participating state, pursuant to 87-1-803, may not hunt, fish, or trap in this state while that privilege is suspended. A person convicted of a violation of this section shall be fined not less than $500 or more than $2,000 or be imprisoned in the county jail for not more than 60 days, or both.

History: En. Sec. 27, Ch. 258, L. 2011.

87-6-307. Unlawful use of discounted combination sports license by youth. A person who hunts or fishes using a youth combination sports license purchased after the person reaches 18 years of age is guilty of a misdemeanor and is subject to any of the following penalties imposed by the court:

(1) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and

(2) a fine of not less than $500 and not more than $5,000 in addition to the fine imposed on a person for the specific hunting or fishing violation.

History: **En. Sec. 39, Ch. 449, L. 2015.**

87-6-308 and 87-6-309 reserved.

87-6-310. Unlawful procurement of license while privileges forfeited or suspended. (1) A person whose privilege to hunt, fish, or trap in this state is forfeited for a conviction or forfeiture of bail or bond for a violation under this chapter in this state may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or trapping license or permit while that privilege is forfeited.

(2) A person whose privilege to hunt, fish, or trap in this state has been suspended for a violation of fish and game law in a participating state, pursuant to 87-1-803, may not apply for or purchase any license to hunt, fish, or trap in this state while that privilege is suspended.

(3) A person convicted of a violation of this section shall be fined not less than $500 or more than $2,000 or be imprisoned in the county jail for not more than 60 days, or both.

History: **En. Sec. 28, Ch. 258, L. 2011.**

87-6-311. Failure to surrender license for violation in participating state. A person whose privilege to hunt, fish, or trap in this state has been suspended for a violation of fish and game law in a participating state, pursuant to 87-1-803, and who refuses to surrender any current hunting, fishing, or trapping license as required shall be fined not less than $500 or more than $2,000 or be imprisoned in the county jail for not more than 60 days, or both.

History: **En. Sec. 29, Ch. 258, L. 2011.**

87-6-312. Offense of noncompliance in Montana. A person who hunts, fishes, traps, purchases licenses, or refuses to surrender any current hunting, fishing, or trapping license in violation of 87-6-919 shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

History: **En. Sec. 30, Ch. 258, L. 2011.**

87-6-313. Offense of noncompliance in participating state. A person who hunts, fishes, or traps, who applies for or purchases licenses or permits, or who refuses to surrender any current hunting, fishing, or trapping license in violation of 87-1-804 shall be fined not less than $500 or more than $2,000 or be imprisoned in the county jail for not more than 60 days, or both.

History: **En. Sec. 31, Ch. 258, L. 2011.**

87-6-314. Unlawful special application or entry. A person convicted of unlawfully applying for or entering a drawing for any special license or permit in violation of 87-6-918 shall be fined not less than $500 or more than $2,000 or be imprisoned in the county detention center for not more than 60 days, or both.

History: **En. Sec. 32, Ch. 258, L. 2011.**

Part 4
Hunting Offenses

Part Cross-References

Second offense penalties, 87-6-901.
Third offense penalties, 87-6-902.
Restitution for illegal killing, possession, or waste of certain wildlife, 87-6-906.
Restitution for illegal killing, possession, or waste of trophy wildlife, 87-6-907.

87-6-401. Unlawful use of equipment while hunting. (1) A person may not:

(a) hunt or attempt to hunt any game animal or game bird by the aid or with the use of any snare, except as allowed in 87-3-127 and 87-3-128, set gun, projected artificial light, trap, salt lick, or bait;

(b) use any recorded or electrically amplified bird or animal calls or sounds or recorded or electrically amplified imitations of bird or animal calls or sounds to hunt wildlife except for predatory animals, wolves, and those birds not protected by state or federal law;

(c) while hunting, use any device or mechanism devised to silence, muffle, or minimize the report of any firearm, whether the device or mechanism is operated from or attached to any firearm. This subsection (1)(c) does not prohibit the use of a device or mechanism registered with the bureau of alcohol, tobacco, firearms and explosives to silence, muffle, or minimize the report of a firearm when hunting wildlife.

(d) while hunting, use any electronic motion-tracking device or mechanism, as defined by commission rule, that is designed to track the motion of a game animal and relay information on the animal's movement to the hunter. A radio-tracking collar attached to a dog that is used by a hunter engaged in lawful hunting activities is not considered a motion-tracking device or mechanism for purposes of this subsection (1)(d).

(e) while hunting, use archery equipment that has been prohibited by rule of the commission;

(f) use a shotgun to hunt deer or elk except with weapon type and loads as specified by the department;

(g) use a rifle to hunt or shoot upland game birds unless the use of rifles is permitted by the department. This does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number 10 gauge, fired from the shoulder.

(h) use a rifle to hunt or shoot wild turkey during the spring wild turkey season; or

(i) during the special muzzleloader heritage hunting season established in 87-1-304, use a muzzleloading rifle that requires insertion of a cap or primer into the open breech of the barrel, is capable of being loaded from the breech, or is mounted with an optical magnification device. Use of preprepared paper or metallic cartridges, sabots, gas checks, or other similar power and range-enhancing manufactured loads that enclose the projectile from the rifling or bore of the firearm is also prohibited.

(2) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A person convicted of hunting while using projected artificial light as described in subsection (1)(a) may be subject to the additional penalties provided in 87-6-901 through 87-6-903.

(4) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907.

History: En. Sec. 33, Ch. 258, L. 2011; amd. Sec. 5, Ch. 13, L. 2013; amd. Sec. 5, Ch. 297, L. 2013; amd. Sec. 1, Ch. 260, L. 2015; amd. Sec. 1, Ch. 66, L. 2017; amd. Sec. 4, Ch. 232, L. 2021; amd. Sec. 17, Ch. 552, L. 2021.

87-6-402. Unlawful hunting within city or town. (1) A person may not hunt or attempt to hunt any game animal within the boundaries of any incorporated or unincorporated city or town of this state except as allowed under a plan developed by a city or town and approved by the department pursuant to 7-3-1105, 7-3-1222, or 7-31-4110.

(2) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907.

History: En. Sec. 34, Ch. 258, L. 2011; amd. Sec. 18, Ch. 552, L. 2021.

87-6-403. Unlawful hunting from public highway. (1) Except as provided in 87-2-803 and 87-6-405, a person may not hunt or attempt to hunt any game animal or game bird on, from, or across any public highway or the shoulder, berm, or barrow pit right-of-way of any public highway, as defined in 61-1-101, in the state.

(2) A person convicted of or who forfeits bond or bail after being charged with a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state for 24 months from the date of conviction or forfeiture of bond or bail unless the court imposes a longer period.

(3) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907.

History: En. Sec. 35, Ch. 258, L. 2011; amd. Sec. 2, Ch. 408, L. 2015; amd. Sec. 33, Ch. 449, L. 2015; amd. Sec. 1, Ch. 128, L. 2017.

87-6-404. Unlawful use of dog while hunting. (1) Except as provided in subsections (3) through (6), a person may not:

(a) chase any game animal or fur-bearing animal with a dog; or

(b) purposely, knowingly, or negligently permit a dog to chase, stalk, pursue, attack, or kill a hooved game animal. If the dog is not under the control of an adult at the time of the violation, the owner of the dog is personally responsible. A defense that the dog was allowed to run at large by another person is not allowable unless it is shown that at the time of the violation, the dog was running at large without the consent of the owner and that the owner took reasonable precautions to prevent the dog from running at large.

(2) Except as provided in subsection (3)(g), a peace officer, game warden, or other person authorized to enforce the Montana fish and game laws who witnesses a dog chasing, stalking, pursuing, attacking, or killing a hooved game animal may destroy that dog on public land or on private land at the request of the landowner without criminal or civil liability.

(3) A person may:

(a) take game birds during the appropriate open season with the aid of a dog;

(b) hunt mountain lions during the winter open season, as established by the commission, with the aid of a dog or dogs;

(c) hunt bobcats during the trapping season, as established by the commission, with the aid of a dog or dogs;

(d) subject to subsection (5), hunt black bears during the spring season with the aid of a dog or dogs as authorized by the commission;

(e) train bird hunting dogs pursuant to the requirements of 87-3-602;

(f) conduct field trials for bird hunting dogs pursuant to the requirements of 87-3-603 or on private land; and

(g) use trained or controlled dogs to chase or herd away game animals or fur-bearing animals to protect humans, lawns, gardens, livestock, or agricultural products, including growing crops and stored hay and grain. The dog may not be destroyed pursuant to subsection (2).

(4) A resident who possesses a Class D-3 resident hound training license may:

(a) pursue mountain lions and bobcats with a dog or dogs during a training season from December 2 of each year to April 14 of the following year; and

(b) pursue black bears with a dog or dogs during a training season from the end of the spring season for black bear through June 15 of that year as authorized by the commission.

(5) A nonresident who possesses a Class D-4 hound license may pursue mountain lions or black bears with a dog or dogs pursuant to 87-2-519.

(6) (a) A person with a valid hunting license issued pursuant to Title 87, chapter 2, may use a dog to track a wounded game animal during an appropriate open season. Any person using a dog in this manner:

(i) shall maintain physical control of the dog at all times by means of a maximum 50-foot lead attached to the dog's collar or harness;

(ii) during the general season, whether handling or accompanying the dog, shall wear hunter orange material pursuant to 87-6-414;

(iii) may carry any weapon allowed by law;

(iv) may dispose of the wounded game animal using any weapon allowed by the valid hunting license; and

(v) shall tag an animal that has been reduced to possession in accordance with 87-6-411.

(b) Dog handlers tracking a wounded game animal with a dog are exempt from licensing requirements under Title 87, chapter 2, as long as they are accompanied by the licensed hunter who wounded the game animal.

(7) A person who is convicted of or who forfeits bond or bail after being charged with a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(8) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907.

History: En. Sec. 36, Ch. 258, L. 2011; amd. Sec. 127, Ch. 258, L. 2011; amd. Sec. 2, Ch. 149, L. 2015; amd. Sec. 6, Ch. 103, L. 2019; amd. Sec. 3, Ch. 378, L. 2019; amd. Secs. 19, 30, Ch. 552, L. 2021.

87-6-405. Unlawful use of vehicle while hunting. (1) Except as provided in 87-2-803, a person may not hunt or attempt to hunt any game animal or game bird from any self-propelled, motor-driven, or drawn vehicle. For the purposes of this section, the term "hunt" does not include:

(a) spotting game from a vehicle; or

(b) if hunting on, from, or across a road or trail or the shoulder, berm, or barrow pit right-of-way of a road or trail that is not a public highway, as defined in 61-1-101, a person who has both feet on the ground and whose body is outside of a vehicle.

(2) While hunting, a person may not:

(a) use a motor-driven vehicle other than on a road or trail designated for travel by a landowner unless permission has been given by that landowner;

(b) use a motor-driven vehicle on a road or trail on state land if that road or trail is posted as closed by the land management agency unless permission has been given by that land management agency. The restriction in this subsection (2)(b) applies only to state land and not to federal land.

(c) use a motor-driven vehicle off road on state land.

(3) The following penalties apply for a violation of this section:

(a) A person convicted of or who forfeits bond or bail after being charged with a violation of subsection (1) shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state for 24 months from the date of conviction or forfeiture of bond or bail unless the court imposes a longer period.

(b) A person convicted of or who forfeits bond or bail after being charged with a violation of subsection (2) shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(4) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907.

History: En. Sec. 37, Ch. 258, L. 2011; amd. Sec. 3, Ch. 408, L. 2015; amd. Sec. 34, Ch. 449, L. 2015; amd. Sec. 2, Ch. 128, L. 2017; amd. Sec. 20, Ch. 552, L. 2021.

87-6-406. Failure to retain evidence of sex. (1) (a) Except as provided in subsection (1)(b) and subject to the provisions of subsection (2), a person who kills a game animal in this state shall retain evidence of the sex of the animal with the carcass until it is processed.

(b) The provisions of subsection (1)(a) do not apply to a game animal harvested using a license with which either sex of the animal may be taken.

(2) A person who kills a game animal in a hunting district where the harvest is limited by the animal's antler point or horn size shall retain the antlers or horns until the carcass is processed.

(3) For game birds, game fish, and furbearers, evidence of sex and species taken must be retained as prescribed by the commission or department.

(4) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

History: En. Sec. 38, Ch. 258, L. 2011; amd. Sec. 1, Ch. 272, L. 2019.

87-6-407. Unlawful transfer of harvested game. A person who purposely, knowingly, or negligently violates 87-3-310 regarding the transfer of possession of harvested game shall be fined not less than $50 or more than $500. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

History: En. Sec. 2, Ch. 238, L. 2019.

87-6-408 and 87-6-409 reserved.

87-6-410. Migratory game bird offenses. A person who violates any provision of 87-3-403 related to migratory game birds shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

History: En. Sec. 39, Ch. 258, L. 2011.

87-6-411. Game animal tagging offenses. (1) Each license issued by the department authorizing the holder of the license to hunt game animals, whether issued to a resident or a nonresident, must provide any tags the department prescribes.

(2) When a person kills a game animal under the license, the person shall, before the carcass is removed from or the person leaves the site of the kill, take physical possession of the game animal by:

(a) electronically validating the license or tag pursuant to rules adopted in accordance with 87-2-119; or

(b) validating the license or tag by cutting out the date the animal was killed. A license or tag that is not electronically validated must accompany the carcass as long as any considerable portion of the carcass remains unconsumed.

(3) When a game animal has been lawfully killed and the proper license or tag is electronically validated or accompanies the game animal that was killed, the game animal becomes the property of the person who lawfully killed the animal and may be possessed, used, stored, donated to another or to a charity, transferred to another person pursuant to 87-3-310, or transported.

(4) A person shall keep the license or tag accompanying the game animal or portion of the game animal while the animal is possessed by the person unless the license or tag was electronically validated.

(5) A person may not validate pursuant to subsection (2) a license or tag that is restricted to a hunting district other than the hunting district where the game animal was killed.

(6) A person who is convicted of or who forfeits bond or bail after being charged with a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting,

fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

History: En. Sec. 40, Ch. 258, L. 2011; amd. Sec. 3, Ch. 149, L. 2015; amd. Sec. 2, Ch. 75, L. 2017; amd. Sec. 7, Ch. 238, L. 2019; amd. Sec. 3, Ch. 316, L. 2023.

87-6-412. Turkey tagging offenses. (1) A person who kills, captures, or possesses a wild turkey by authority of any turkey tag or permit:

(a) shall validate the tag either electronically in accordance with rules adopted pursuant to 87-2-119 or by cutting out from the license or tag the date the turkey was killed prior to the person leaving or the turkey being removed from the site of the kill;

(b) shall keep the license or tag accompanying the turkey while the turkey is in the person's possession unless the license or tag was electronically validated; and

(c) may not validate pursuant to subsection (1)(a) a turkey license or tag that is restricted to a hunting district other than the hunting district where the turkey was killed.

(2) A person who is convicted of or who forfeits bond or bail after being charged with a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

History: En. Sec. 41, Ch. 258, L. 2011; amd. Sec. 4, Ch. 149, L. 2015; amd. Sec. 3, Ch. 75, L. 2017; amd. Sec. 21, Ch. 552, L. 2021; amd. Sec. 4, Ch. 316, L. 2023.

87-6-413. Hunting or killing over limit. (1) A person may not attempt to kill, take, shoot, or capture or kill, take, hunt, shoot, or capture more than one game animal of any one species in any 1 license year unless the killing of more than one game animal of that species has been authorized by regulations of the department.

(2) If a person is convicted or forfeits bond or bail after being charged with hunting or killing over the limit of:

(a) mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear, the person shall be fined not less than $500 or more than $2,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

(b) deer, antelope, elk, or mountain lion, the person shall be fined not less than $300 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period.

(c) fur-bearing animal, the person shall be fined not less than $100 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated.

(3) A person convicted of unlawful taking of more than double the legal bag limit as described in this section may be subject to the additional penalties provided in 87-6-901 and 87-6-902.

(4) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907.

History: En. Sec. 42, Ch. 258, L. 2011.

Cross-References

Second offense penalties, 87-6-901.
Third offense penalties, 87-6-902.

87-6-414. Failure to wear hunter orange while big game hunting. (1) Except as provided in subsection (3), a person may not hunt any big game animals in this state or accompany any hunter as an outfitter or guide under any of the provisions of the laws of this state without wearing as exterior garments above the waist a total of not less than 400 square inches of hunter orange material visible at all times while hunting.

(2) As used in this section, "hunter orange" means a daylight fluorescent orange color.

(3) This section does not apply to a person hunting:

(a) with a bow and arrow during the special archery season; or

(b) wolves outside the general deer and elk season as authorized by commission rules.

(4) The department shall make rules to implement this section.

(5) A person convicted of a violation of this section shall be punished by a fine of not less than $10 or more than $20.

History: En. Sec. 43, Ch. 258, L. 2011; amd. Sec. 6, Ch. 13, L. 2013; amd. Sec. 6, Ch. 297, L. 2013.

87-6-415. Failure to obtain landowner's permission for hunting. (1) A person may not hunt or attempt to hunt furbearers, game animals, migratory game birds, nongame wildlife, predatory animals, upland game birds, or wolves on private property without first obtaining permission of the landowner, the lessee, or their agents.

(2) A person who violates this section shall, upon conviction for a first offense, be fined not less than $135 or more than $500.

(3) A person convicted of a second or subsequent offense of hunting on private property without obtaining permission of the landowner within 5 years shall be fined not less than $500 or more than $1,000.

(4) In addition, the person, upon conviction under subsection (3) or forfeiture of bond or bail:

(a) shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for not less than 12 months or more than 3 years from the date of conviction or forfeiture of bond or bail; and

(b) may be ordered to make restitution for property damage resulting from the violation in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the restitution. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered must be made prior to the release of state jurisdiction over the person convicted.

(5) For the purposes of this section, the term "hunt" has the same meaning as provided in 87-6-101 and includes entering private land to:

(a) retrieve wildlife; or

(b) access public land to hunt.

History: En. Sec. 44, Ch. 258, L. 2011; amd. Sec. 1, Ch. 338, L. 2013; amd. Sec. 1, Ch. 92, L. 2015; amd. Sec. 1, Ch. 92, L. 2021; amd. Sec. 18, Ch. 166, L. 2023.

87-6-416 through 87-6-419 reserved.

87-6-420. Prohibition on carcass imports. (1) Except as provided in subsection (2), it is unlawful to transport into this state the whole carcass or certain carcass parts of white-tailed deer, mule deer, moose, or elk from states or provinces with documented occurrences of chronic wasting disease, as determined by the fish and wildlife commission, in wild populations or on private game farms.

(2) The following carcass parts may be transported into this state from the places described in subsection (1):

(a) meat that is cut and wrapped or meat that is boned out;

(b) quarters or other portions of meat with no part of the spinal column or head attached;

(c) hides with no heads attached;

(d) skull plates or antlers with no meat or tissue attached;

(e) skulls that have been boiled and cleaned to remove flesh and tissue;

(f) upper canine teeth; and

(g) head, partial body, or whole body mounts prepared by a taxidermist.

(3) (a) Except as provided in subsection (3)(b), a person convicted of a violation of this section shall be fined up to $500 or, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by the state and the privilege to hunt, fish, or trap in this state or to use state lands as defined in 77-1-101 for recreational purposes for a period of time set by the court.

(b) Through January 31, 2019, a person who violates this section for the first time must be issued a warning and may not be fined. A person who commits a subsequent violation prior to January 31, 2019, is subject to the penalties provided in subsection (3)(a).

History: En. Sec. 1, Ch. 293, L. 2017.

Part 5
Fishing Offenses

87-6-501. Fishing offenses. (1) Except when specifically authorized by law or by commission rule, a person may not:

(a) fish by any means other than by hook and single line or single rod, in hand or within immediate control. This does not prevent:

(i) fishing from a boat or the shore on a lake or reservoir by hook and two lines or two rods, in hand or within immediate control, in accordance with rules that the commission adopts;

(ii) the snagging of paddlefish, chinook salmon, and kokanee (sockeye salmon) when the commission declares an open season when paddlefish, chinook salmon, and kokanee (sockeye salmon) may be taken by snagging;

(iii) the taking of paddlefish, channel catfish, and nongame fish with longbow and arrow under rules and regulations that the commission adopts;

(iv) the use of landing net or gaff to land a game fish after the game fish has been hooked as specified in this subsection (1)(a);

(v) the taking of minnows other than game fish variety by the use or aid of a net not to exceed 12 feet in length and 4 feet in width in waters designated by the commission;

(vi) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River under the rules and regulations that the commission adopts;

(vii) the taking of any game fish through a hole in ice with an unattended line or rod as long as the angler is in the vicinity and within visual contact of the line or rod; or

(viii) the taking of salmon and lake trout in Fort Peck reservoir by spear or gig from December through March under rules and regulations that the commission adopts.

(b) unlawfully use any fishing rod and line, fishing lines, spear, gig, or barbed fork;

(c) take or catch fish using fishtraps, grabhooks, spears, gigs, or other similar means for catching fish;

(d) use any gun or trap or other device to entrap, catch, capture, or take or to attempt to entrap, catch, capture, or take any game fish;

(e) have in the person's possession or under the person's control a seine, net, or other similar device for capturing fish. A seine or net found in a vehicle, at the camp, or on the premises of a person is prima facie evidence that the seine, net, or similar device belongs to the person or persons occupying the camp or premises. This subsection (1)(e) does not apply to:

(i) a license holder for a private fish pond who is licensed to sell fish and eggs under 87-4-603;

(ii) a person with an unexpired seine or net license;

(iii) the use, by any person, of a landing net in connection with or in addition to a pole, line, and hooks in fishing for game fish; or

(iv) the possession of traps, seines, or nets when found in the vicinity of any waters in which the commission has designated that traps, seines, or nets may be used for the taking of nongame fish or game fish.

(f) take or catch fish with a hook baited with any poisonous substance or using any poisonous substance, including fish berries;

(g) use archery equipment prohibited by rule of the commission to fish; or

(h) use any carbide, lime, giant powder, dynamite, or other explosive compounds or any corrosive or narcotic poison or other deleterious substance or have any of the enumerated items in the person's possession within 100 feet of any stream where fish are found for the purpose of catching, stunning, or killing fish. This subsection (1)(h) does not apply to anyone authorized by the department to conduct lake or stream surveys or to control undesirable or overpopulated species of fish.

(2) The possession of a fishing rod and line, spear, gig, or barbed fork on the banks or shores of a stream or lake is prima facie evidence that the person or persons in whose possession these implements are found were using the implements to fish.

(3) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(4) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 and 87-6-906.

History: **En. Sec. 45, Ch. 258, L. 2011.**

Cross-References

Restitution for illegal killing, possession, or waste of certain wildlife, 87-6-906.
Restitution for illegal killing, possession, or waste of trophy wildlife, 87-6-907.

Part 6
Trapping Offenses

87-6-601. Trapping and snaring offenses. (1) A person may not use a trap or snare for the purpose of trapping or snaring a fur-bearing animal, a predatory animal, or a nongame species unless:

(a) the trap or snare is tagged with a metal tag bearing an individual identifying number issued by the department or the owner's name and address unless the person is trapping or snaring on the person's land or an irrigation ditch right-of-way contiguous to the person's land; and

(b) the trap or snare is set in a manner and at a time so that it will not unduly endanger livestock. A person who injures livestock in a trap or snare is liable for damages to the owner of the livestock.

(2) A person may not use a trap or snare for the purpose of trapping or snaring a fur-bearing animal, a predatory animal, or a nongame species on private property without obtaining permission from the landowner, the lessee, or their agents.

(3) A person may not at any time willfully destroy, open or leave open, or partially destroy a house of any muskrat or beaver, except that trapping in the house of muskrats is not prohibited when authorized by the commission.

(4) (a) A person may not destroy, disturb, or remove any trap or snare belonging to another person or remove wildlife from a trap or snare belonging to another person without permission of the owner of the trap or snare, except that from March 1 to October 1 of each year a person may remove any snare from land owned or leased by the person if the snare would endanger livestock.

(b) This subsection (4) does not apply to a law enforcement officer acting within the scope of the officer's duty.

(5) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by the state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(6) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 and 87-6-906.

History: **En. Sec. 46, Ch. 258, L. 2011; amd. Sec. 1, Ch. 96, L. 2021.**

Cross-References

Restitution for illegal killing, possession, or waste of certain wildlife, 87-6-906.
Restitution for illegal killing, possession, or waste of trophy wildlife, 87-6-907.

87-6-602. Trapping during closed season — exception. (1) A person may not trap or hunt or attempt to trap or hunt any fur-bearing animal until the commission provides an open season on any fur-bearing animal. The furs and hides of fur-bearing animals legally taken during the open season may be possessed, bought, and sold at any time except as provided by law.

(2) (a) The director or a designee of the director may issue a permit to hunt or trap beaver or muskrat to a resident landowner or employee of an irrigation project or district or to an owner or employee of an entity owning rural or urban developed structures when it is shown that beaver or muskrat are causing severe injury or are a menace to:

(i) the structures, canal banks, or other works of an irrigation project or district;

(ii) a stock water pond; or

(iii) other rural or urban developed structures.

(b) (i) Except as provided in subsection (2)(b)(ii), a permit to hunt or trap beaver or muskrat is required under this section.

(ii) Between June 1 and August 31 of each year, a permit to hunt or trap beaver or muskrat is not required.

(3) A person convicted of a violation of this section shall be fined not less than $100 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated.

(4) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 and 87-6-906.

History: En. Sec. 47, Ch. 258, L. 2011; amd. Sec. 1, Ch. 43, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 43, L. 2025. Amendment effective September 1, 2025.

Cross-References

Hunting or fishing during closed season, 87-6-204.

Restitution for illegal killing, possession, or waste of certain wildlife, 87-6-906.

Restitution for illegal killing, possession, or waste of trophy wildlife, 87-6-907.

87-6-603. Waste of fur-bearing animal. (1) A person may not waste a fur-bearing animal by purposely or knowingly:

(a) failing to pick up traps or snares at the end of the trapping season so that the pelt of a fur-bearing animal is wasted;

(b) attending traps or snares so that fur-bearing animals are wasted; or

(c) wasting the pelt of any fur-bearing animal.

(2) The department shall enforce the provisions of this section.

(3) The following are exempt from this section:

(a) federal, state, and county predator control programs; and

(b) pelts of muskrat and beaver killed pursuant to 87-6-602(2).

(4) As used in this section, "pelt" means the pelt, skin, or fur of a fur-bearing animal.

(5) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, a person, upon conviction or forfeiture of bond or bail, shall:

(a) forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period; and

(b) pay restitution pursuant to 87-6-905 and 87-6-906.

History: En. Sec. 48, Ch. 258, L. 2011; amd. Sec. 128, Ch. 258, L. 2011.

Cross-References

Waste of game animal, game bird, or game fish, 87-6-205.

Part 7
Commercial Offenses

87-6-701. Failure to report or tattoo. (1) Any bear, wolf, tiger, mountain lion, or coyote that is captured alive to be released later or that is held in captivity for any purpose must be reported to the department within 3 days of the capture or commencement of captivity.

(2) Each animal reported as required in subsection (1) must be permanently tattooed or otherwise permanently identified in a manner that will provide positive individual identification of the animal. No tattoo is required if the animal is subject to a permanent, individual identification process by another state or federal agency.

(3) Any person holding a bear, wolf, tiger, mountain lion, or coyote in captivity shall immediately report to the department any death, escape, release, transfer of custody, or other disposition of the animal.

(4) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

History: En. Sec. 49, Ch. 258, L. 2011.

87-6-702. Outfitting without license. (1) (a) A person may not purposely or knowingly engage in outfitting while not licensed pursuant to Title 37, chapter 47.

(b) A person convicted of a violation of subsection (1)(a) is punishable by a fine of not less than $200 or more than $1,000 or imprisonment in the county jail for up to 1 year, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for a period set by the court. A sentencing court that imposes a period of license revocation shall consider the provisions of subsection (3).

(2) (a) A person or entity that represents to any other person, any entity, or the public that the person or entity is an outfitter and who commits the offense of outfitting without a license, as described in subsection (1)(a), for any portion of 5 or more days for consideration within 1 calendar year for any person or for consideration valued in excess of $5,000 is punishable by a fine of not more than $50,000 or imprisonment in the state prison for up to 5 years, or both.

(b) A person convicted of a violation of subsection (2)(a) shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for a minimum of 5 years. A sentencing court that imposes a period of license revocation shall consider the provisions of subsection (3).

(3) A sentencing court that imposes a period of license revocation pursuant to subsection (1)(b) or (2)(b) shall consider and may impose any of the following conditions during the period of revocation:

(a) prohibiting the offender from:

(i) participating in any hunting, fishing, or trapping endeavor as a hunter, angler, trapper, scout, guide, observer, or assistant;

(ii) brokering or participating in any lease of property for hunting, fishing, or trapping, either personally or through an agent or representative;

(iii) participating in any seminar or show that is designed to promote hunting, fishing, or trapping;

(iv) purchasing or possessing any hunting, fishing, or trapping permits; and

(b) imposing any other reasonable condition or restriction that is related to the crime committed or that is considered necessary for the rehabilitation of the offender or for the protection of the citizens or wildlife of this state.

(4) A person convicted of a violation of this section shall reimburse the full amount of any fees received to the person to whom illegal outfitting services were provided.

(5) As used in this section, the following definitions apply:

(a) "Consideration" means remuneration given in exchange for outfitting services supplied based on a business relationship between parties, but not including reimbursement for shared trip expenses.

(b) (i) "Outfitting" means providing hunting or fishing services for consideration, including any saddle or pack animal, facilities, camping equipment, personal service, or vehicle, watercraft, or other conveyance for any person to hunt, fish, trap, capture, take, kill, or pursue any game, including fish. The term includes accompanying that person, either part or all of the way, on an expedition for any of these purposes or supervision of a licensed guide in accompanying that person.

(ii) The term does not include:

(A) services provided by packers, wranglers, cooks, or other parties under the direct employment of the outfitter;

(B) services provided by an outfitter's assistant who has documentation as provided in 37-47-404(4); or

(C) the provision of the services listed in subsection (5)(b)(i) by a person on real property that the person owns for the primary pursuit of bona fide agricultural interests.

History: En. Sec. 50, Ch. 258, L. 2011; amd. Sec. 9, Ch. 241, L. 2013; amd. Sec. 18, Ch. 341, L. 2013; amd. Sec. 12, Ch. 281, L. 2021.

87-6-703. Taxidermist offenses. (1) A person convicted of a violation of 87-4-201 related to the licensing and recordkeeping of taxidermists shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(2) In addition to the penalties in subsection (1), the taxidermist's license of the person convicted may be revoked by the court.

History: En. Sec. 51, Ch. 258, L. 2011.

87-6-704. Fur dealer offenses. A person convicted of a violation of 87-4-302 or 87-4-303 related to the licensing and recordkeeping of a fur dealer shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by the state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

History: En. Sec. 52, Ch. 258, L. 2011.

87-6-705. Alternative livestock ranch offenses. (1) A person may not purposely or knowingly violate any provision of or rule adopted pursuant to Title 87, chapter 4, part 4, pertaining to the licensure or operation of an alternative livestock ranch.

(2) In addition to license revocation or other penalties allowed by 87-4-427, a person who purposely or knowingly violates this section shall be fined not more than $1,000 or be imprisoned in the county jail for not more than 1 year, or both.

(3) Any violation of 87-6-206 regarding the sale of an animal in connection with an alternative livestock ranch is subject to prosecution and penalties under that section.

History: En. Sec. 53, Ch. 258, L. 2011.

87-6-706. Shooting preserve offenses. (1) A person may not:

(a) hunt on a shooting preserve without obtaining a license pursuant to 87-4-504; or

(b) harvest game on a shooting preserve without reporting the game pursuant to 87-4-525.

(2) Each shooting preserve operator shall keep records in accordance with 87-4-522.

(3) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

History: En. Sec. 54, Ch. 258, L. 2011; amd. Sec. 22, Ch. 552, L. 2021; amd. Sec. 6, Ch. 82, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 82, L. 2025. Amendment effective April 7, 2025.

87-6-707. Unlawful sale of fish or spawn. (1) Except as provided in subsections (2) and (3), a person may not, for speculative purposes, for market, or for sale, catch game fish or remove or cause to be removed the eggs or spawn of any game fish in any way. A person may not sell or offer for sale game fish or the eggs or spawn from game fish.

(2) The restrictions of subsection (1) do not apply to the:

(a) catching of fish or the collecting of eggs or spawn in a private fish pond licensed under 87-4-603 by the owner of the pond;

(b) taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for use in a private fish pond licensed under 87-4-603;

(c) catching of whitefish by the holder of a valid fishing license fishing with hook and line or a rod in specified waters designated by rules of the commission;

(d) taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River under rules of the commission; or

(e) sale by the department of fish eggs produced from brood stock owned by the department but determined to be in excess of the department's needs.

(3) A person may possess and sell legally taken nongame fish as provided in 87-4-609 and rules adopted by the department pursuant to 87-4-609.

(4) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

History: En. Sec. 55, Ch. 258, L. 2011; amd. Sec. 6, Ch. 39, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 39, L. 2025. Amendment effective April 3, 2025.

87-6-708 through 87-6-712 reserved.

87-6-713. Unlawful taking of fish or aquatic organism. (1) A person may not take fish or aquatic organisms for commercial purposes without obtaining a permit from the department pursuant to 87-4-609.

(2) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 and 87-6-906.

History: En. Sec. 56, Ch. 258, L. 2011.

Cross-References

Restitution for illegal killing, possession, or waste of certain wildlife, 87-6-906.

Restitution for illegal killing, possession, or waste of trophy wildlife, 87-6-907.

87-6-714. Unlawful taking of crayfish. (1) A person may not take crayfish from the waters of the state, except from private fish ponds regulated under 87-4-603 or as provided in subsection (2) of this section, for sale or commercial distribution.

(2) A person may take crayfish from the waters of the state for sale or commercial distribution as fishing bait under rules adopted by the department under 87-4-609.

(3) A person convicted of a violation of this section may be fined not less than $50 or more than $500 or may be imprisoned in the county jail for not more than 6 months, or both.

History: En. Sec. 57, Ch. 258, L. 2011.

87-6-715. Menagerie, sanctuary, and zoo offenses. (1) A person may not:

(a) operate a roadside menagerie or wild animal menagerie without a permit obtained pursuant to 87-4-803;

(b) subscribe to any false statement in an application for a permit; or

(c) obtain wild animals for a roadside menagerie, wild animal menagerie, wildlife sanctuary, or zoo by capture from the wild or by purchase except in accordance with 87-4-804.

(2) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

History: **En. Sec. 58, Ch. 258, L. 2011; amd. Sec. 8, Ch. 211, L. 2021.**

87-6-716. Owning, controlling, or propagating game birds without license. A person who owns, controls, or propagates game birds in violation of Title 87, chapter 4, part 9, shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

History: **En. Sec. 59, Ch. 258, L. 2011.**

87-6-717. Owning, controlling, or propagating furbearers without license. A person who owns, controls, or propagates furbearers in violation of 87-4-1002 shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

History: **En. Sec. 60, Ch. 258, L. 2011.**

87-6-718. Unlawful acquisition of furbearer. (1) A person may not capture, take, or otherwise acquire a furbearer from the wild for use on a fur farm.

(2) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 and 87-6-906.

History: **En. Sec. 61, Ch. 258, L. 2011.**

Cross-References

Restitution for illegal killing, possession, or waste of certain wildlife, 87-6-906.
Restitution for illegal killing, possession, or waste of trophy wildlife, 87-6-907.

Part 8
Wild Birds, Raptors, and Falcons

87-6-801. Wild bird, raptor, and falcon offenses. (1) A person who violates any provision of Title 87, chapter 5, part 2, pertaining to the regulation of wild birds, raptors, and falconry, shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(2) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 and 87-6-906.

History: **En. Sec. 62, Ch. 258, L. 2011.**

Cross-References

Restitution for illegal killing, possession, or waste of certain wildlife, 87-6-906.
Restitution for illegal killing, possession, or waste of trophy wildlife, 87-6-907.

Part 9
Additional Sentencing Provisions

87-6-901. Second offense penalties. (1) A person convicted of a second offense of any of the following offenses within 10 years of the first conviction or who is convicted of two or more of the following offenses at different times within a 10-year period is subject to the penalties provided in subsection (2):

(a) hunting during a closed season;
(b) taking an animal or hunting while using projected artificial light;
(c) hunting without a license;
(d) unlawful taking of more than double the legal bag limit;
(e) unlawful possession of more than double the legal bag limit; and
(f) waste of game by abandonment in the field.

(2) A person convicted of the offenses in subsection (1) in the time periods specified in subsection (1) shall be fined not less than $2,000 or more than $5,000 or be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 60 months from the date of conviction or forfeiture unless the court imposes a longer period.

History: En. Sec. 63, Ch. 258, L. 2011.

Cross-References

Unlawful possession, shipping, or transportation of game fish, bird, game animal, or fur-bearing animal, 87-6-202.
Unlawful taking, killing, trapping, labeling, or packaging of fur-bearing animal or pelt, 87-6-203.
Hunting or fishing during closed season, 87-6-204.
Waste of game animal, game bird, or game fish, 87-6-205.
Hunting, fishing, or trapping without license, 87-6-301.
Unlawful use of equipment while hunting, 87-6-401.
Hunting or killing over limit, 87-6-413.
Additional penalty for use of artificial light or scope, 87-6-903.

87-6-902. Third offense penalties. (1) A person convicted of a third offense of any of the following offenses within 10 years of the first conviction is subject to the penalties provided in subsection (2):

(a) hunting during a closed season;
(b) taking an animal or hunting while using projected artificial light;
(c) hunting without a license; and
(d) unlawful taking of more than double the legal bag limit.

(2) A person convicted of the offenses in subsection (1) in the time period specified in subsection (1) shall be fined not less than $5,000 or more than $10,000 or be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for life.

History: En. Sec. 64, Ch. 258, L. 2011.

Cross-References

Unlawful taking, killing, trapping, labeling, or packaging of fur-bearing animal or pelt, 87-6-203.
Hunting or fishing during closed season, 87-6-204.
Hunting, fishing, or trapping without license, 87-6-301.
Unlawful use of equipment while hunting, 87-6-401.
Hunting or killing over limit, 87-6-413.
Additional penalty for use of artificial light or scope, 87-6-903.

87-6-903. Additional penalty for use of artificial light or scope. (1) If a person is convicted of illegally taking an animal described in 87-6-906 or 87-6-907 through the use of projected artificial light, nightscopes, or infrared scopes, the person is prohibited from fishing or hunting in the state for an additional 5 years following the ending date of the original prohibition period. In addition, the person, upon conviction or forfeiture of bond or bail, shall successfully complete, at the person's own expense, a department-sponsored hunter education course.

(2) A person convicted of taking an animal while using projected artificial light as described in this section may be subject to the additional penalties provided in 87-6-901 and 87-6-902.

History: En. Sec. 65, Ch. 258, L. 2011.

Cross-References

Unlawful use of equipment while hunting, 87-6-401.

87-6-904. Different penalty for unlawful attempt to hunt or trap. A person convicted of unlawfully attempting to hunt or trap a game animal shall be fined not less than $200 or more than $600 or be imprisoned in the county detention center for not more than 60 days, or both.

History: En. Sec. 66, Ch. 258, L. 2011.

87-6-905. Finding required for restitution. Before restitution may be ordered pursuant to 87-6-906 or 87-6-907, the finder of fact at trial or the court upon entry of a guilty or nolo contendere plea shall find that the illegal killing or possession was done knowingly or purposely as defined in 45-2-101. This finding is not required for state reimbursement under 87-6-906 when bond or bail is forfeited.

History: En. Sec. 67, Ch. 258, L. 2011.

Cross-References

Unlawful possession, shipping, or transportation of game fish, bird, game animal, or fur-bearing animal, 87-6-202.
Unlawful taking, killing, trapping, labeling, or packaging of fur-bearing animal or pelt, 87-6-203.
Hunting or fishing during closed season, 87-6-204.
Waste of game animal, game bird, or game fish, 87-6-205.
Hunting, fishing, or trapping without license, 87-6-301.
Unlawful use of equipment while hunting, 87-6-401.
Unlawful hunting within city or town, 87-6-402.
Unlawful hunting from public highway, 87-6-403.
Unlawful use of dog while hunting, 87-6-404.
Unlawful use of vehicle while hunting, 87-6-405.
Hunting or killing over limit, 87-6-413.
Fishing offenses, 87-6-501.
Trapping and snaring offenses, 87-6-601.
Trapping during closed season — exception, 87-6-602.
Unlawful taking of fish or aquatic organism, 87-6-713.
Unlawful acquisition of furbearer, 87-6-718.
Wild bird, raptor, and falcon offenses, 87-6-801.

87-6-906. Restitution for illegal killing, possession, or waste of certain wildlife. (1) Except as provided in 87-6-907 and in addition to other penalties provided by law, a person convicted or forfeiting bond or bail on a charge of the illegal taking, killing, possession, or waste of a wild bird, mammal, or fish listed in this section shall reimburse the state for each bird, mammal, or fish according to the following schedule:

(a) mountain sheep and endangered species, $2,000;

(b) elk, caribou, bald eagle, black bear, wolf, and moose, $1,000;

(c) mountain lion, lynx, wolverine, buffalo, golden eagle, osprey, falcon, antlered deer as defined by commission regulation, bull trout longer than 18 inches, and adult buck antelope as defined by commission regulation, $500;

(d) deer not included in subsection (1)(c), antelope not included in subsection (1)(c), fisher, raptor not included in subsection (1)(c), swan, bobcat, white sturgeon, river-dwelling grayling, and paddlefish, $300;

(e) fur-bearing animals that are not listed in subsection (1)(c) or (1)(d), $100;

(f) game bird (except swan), $25;

(g) game fish, $10.

(2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all of the forfeited bond or bail be paid as restitution to the state according to the schedule in subsection (1). A hearing to determine the amount of restitution, as required under 46-9-512, is not required for an order of restitution under this section.

History: En. Sec. 68, Ch. 258, L. 2011; amd. Sec. 129, Ch. 258, L. 2011.

Cross-References

Unlawful possession, shipping, or transportation of game fish, bird, game animal, or fur-bearing animal, 87-6-202.
Unlawful taking, killing, trapping, labeling, or packaging of fur-bearing animal or pelt, 87-6-203.
Waste of game animal, game bird, or game fish, 87-6-205.
Hunting, fishing, or trapping without license, 87-6-301.
Unlawful use of equipment while hunting, 87-6-401.

Unlawful hunting within city or town, 87-6-402.
Unlawful hunting from public highway, 87-6-403.
Unlawful use of dog while hunting, 87-6-404.
Unlawful use of vehicle while hunting, 87-6-405.
Hunting or killing over limit, 87-6-413.
Fishing offenses, 87-6-501.
Trapping and snaring offenses, 87-6-601.
Trapping during closed season — exception, 87-6-602.
Unlawful taking of fish or aquatic organism, 87-6-713.
Unlawful acquisition of furbearer, 87-6-718.
Wild bird, raptor, and falcon offenses, 87-6-801.

87-6-907. Restitution for illegal killing, possession, or waste of trophy wildlife. In addition to other penalties provided by law, a person convicted or forfeiting bond or bail on a charge of purposely or knowingly illegally killing, taking, possessing, or wasting a trophy animal listed in this section shall reimburse the state for each trophy animal according to the following schedule:

(1) mountain sheep with at least one horn equal to or greater than a three-fourths curl as defined by commission regulation, $30,000;

(2) elk with at least six points on one antler, as defined by commission regulation, or any grizzly bear, $8,000;

(3) moose having antlers with a total spread of at least 30 inches, as defined by commission regulation, or any mountain goat, $6,000;

(4) antlered deer with at least four points on one antler as defined by commission regulation, $8,000;

(5) antelope with at least one horn greater than 14 inches in length as defined by commission regulation, $2,000.

History: **En. Sec. 69, Ch. 258, L. 2011; amd. Sec. 130, Ch. 258, L. 2011.**

Cross-References

Unlawful possession, shipping, or transportation of game fish, bird, game animal, or fur-bearing animal, 87-6-202.
Waste of game animal, game bird, or game fish, 87-6-205.
Hunting, fishing, or trapping without license, 87-6-301.
Unlawful use of equipment while hunting, 87-6-401.
Unlawful hunting within city or town, 87-6-402.
Unlawful hunting from public highway, 87-6-403.
Unlawful use of dog while hunting, 87-6-404.
Unlawful use of vehicle while hunting, 87-6-405.
Hunting or killing over limit, 87-6-413.

87-6-908. Payment — penalty for nonpayment of restitution. (1) In each case of conviction, the court before which the conviction is obtained shall order payment of the sum stated in 87-6-906 or 87-6-907.

(2) Failure to make payment in the time and manner prescribed by the court constitutes civil contempt of court and is punishable as provided in Title 3, chapter 1, part 5.

History: **En. Sec. 70, Ch. 258, L. 2011.**

87-6-909 through 87-6-913 reserved.

87-6-914. Disposition of proceeds from restitution. All money collected by a court pursuant to 87-6-905 through 87-6-908 must be remitted to the department of revenue for deposit in the state special revenue fund account to the credit of the department for hunter education purposes or for enforcement.

History: **En. Sec. 71, Ch. 258, L. 2011.**

87-6-915. Remedial hunter education program — sentencing. (1) The court may sentence a person who is convicted of a hunting violation that results in a mandatory forfeiture of hunting privileges or who is convicted of a hunting violation to complete a remedial hunter education course.

(2) A person who is sentenced by the court to complete a remedial hunter education course shall successfully complete the course before any license privileges may be restored.

(3) The department may not issue a hunting, fishing, or trapping license to a person who is convicted of a hunting violation that results in a mandatory forfeiture of hunting privileges until the person has successfully completed the remedial hunter education course.

(4) If the person who is sentenced by the court to complete the remedial hunter education course is not a resident of the state of Montana, the sentencing court shall require the person to complete a similar remedial hunter education course in the person's state of residence. If a similar course does not exist in the person's state of residence, the person shall complete Montana's course before any Montana hunting, fishing, or trapping license may be issued.

(5) This section does not allow the issuance of any licenses to a person whose hunting or fishing privileges have been revoked for life.

History: En. Sec. 72, Ch. 258, L. 2011.

87-6-916. Costs of imprisonment. Subject to sentencing restrictions, the court shall order a person who is convicted pursuant to this chapter to pay the costs of imprisonment under this chapter.

History: En. Sec. 73, Ch. 258, L. 2011.

87-6-917. Privileges of juveniles. A mandatory forfeiture of privileges imposed pursuant to this chapter does not apply to juveniles. However, the court may, at its discretion, order forfeiture of a juvenile's current hunting, fishing, or trapping licenses issued by this state and the juvenile's privilege to hunt, fish, or trap in this state upon conviction or forfeiture of bond or bail for a violation of this title.

History: En. Sec. 74, Ch. 258, L. 2011.

87-6-918. Restriction on special application or entry when ordered to pay restitution. A person convicted or who has forfeited bond or bail under this title and who has been ordered to pay restitution under the provisions of 87-6-906 or 87-6-907 may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later. If the violation involved the unlawful taking of a moose, a mountain sheep, or a mountain goat, the person may not apply for a special license or enter a drawing for a special license or permit for the same species of game animal that was unlawfully taken for an additional period of 5 years following the ending date of the first 5-year period.

History: En. Sec. 75, Ch. 258, L. 2011.

87-6-919. Suspension of privileges for failure to comply with citation, sentence, or administrative suspension. (1) A person who fails to comply with the terms of a court citation or the terms of an administrative suspension or who fails to fulfill the obligations of any court-imposed sentence for a wildlife violation under this title, resulting in the issuance of a warrant for the person's arrest, shall forfeit any current hunting, fishing, or trapping license issued by this state to the department, and the person's privilege to hunt, fish, or trap in this state is suspended until the terms of the court citation or sentence are satisfied.

(2) A person who loses the person's privileges under this section must be notified by the department or by the administrative authority in person or by mail.

History: En. Sec. 76, Ch. 258, L. 2011.

87-6-920. Forfeiture of license or permit for littering. A holder of a Montana resident or nonresident fishing or hunting license or camping permit convicted of littering campgrounds, public or private lands, streams, or lakes while hunting, fishing, or camping shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, camp, or trap in this state for a period of 1 year from the date of conviction.

History: En. Sec. 77, Ch. 258, L. 2011.

87-6-921. Revocation of exception. If a person is convicted of a violation of the fish and game laws or regulations of Montana, the privilege conferred by 87-2-801 through 87-2-803 and 87-2-816 and 87-2-817 must be revoked for not less than 6 months.

History: En. Sec. 78, Ch. 258, L. 2011; amd. Sec. 35, Ch. 449, L. 2015.

87-6-922. Notification of loss of privileges — reinstatement and revocation. (1) If the court imposes forfeiture of the person's license and privilege to hunt, fish, or trap or to use state lands, the department shall notify the person of the loss of privileges as imposed by the court. The person shall surrender all licenses, as ordered by the court, to the department within 10 days.

(2) After a forfeiture period imposed pursuant to this chapter and upon receipt of notification from the court that the defendant has appeared and all terms of the court sentence, including making payment of any fine, costs, or restitution, have been met or that the defendant is in compliance with installment payments specified by the court, the department shall reinstate the privileges unless the person is not otherwise entitled to reinstatement. After the privileges are reinstated, the department may revoke the privileges if it is notified by the clerk of court that the person is in default on any installment payment.

History: En. Sec. 79, Ch. 258, L. 2011.

87-6-923. Suspension by administrative authority — notice and surrender of license or permit. If an administrative authority suspends a license, permit, or privilege to obtain a license or permit issued under this title, the administrative authority or the department shall notify the person of the suspension and the person shall surrender the license or permit to the department within 10 days.

History: En. Sec. 80, Ch. 258, L. 2011.

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RESERVED

87-6-922. Notification of loss of privileges — reinstatement and revocation. (1) If the court imposes forfeiture of the person's license and privilege to hunt, fish, or trap or to use state lands, the department shall notify the person of the loss of privileges as imposed by the court. The person shall surrender all licenses, as ordered by the court, to the department within 10 days.

(2) After a forfeiture period imposed pursuant to this chapter and upon receipt of notification from the court that the defendant has appeared and all terms of the court sentence, including making payment of any fine, costs, or restitution, have been met or that the defendant is in compliance with installment payments specified by the court, the department shall reinstate the privileges unless the person is not otherwise entitled to reinstatement. After the privileges are reinstated, the department may revoke the privileges if it is notified by the clerk of court that the person is in default on any installment payment.

History: En. Sec. 79, Ch. 258, L. 2011.

87-6-923. Suspension by administrative authority — notice and surrender of license or permit. If an administrative authority suspends a license, permit, or privilege to obtain a license or permit issued under this title, the administrative authority or the department shall notify the person of the suspension and the person shall surrender the license or permit to the department within 10 days.

History: En. Sec. 80, Ch. 258, L. 2011.

TITLE 90

PLANNING, RESEARCH, AND DEVELOPMENT

Ch.

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2. Resource Development and Reclamation.
3. Research and Commercialization.
4. Energy Development and Conservation.
5. Secondary Industry and Commercial Development.
6. Community Impact — Planning and Abatement.
7. Facility Finance Authority.
8. Montana Capital Company Act. Repealed.
9. Agriculture Development.
10. Montana Equity Capital Investment Act. Repealed.
11. Indian Affairs — Planning and Coordination.

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14. Community Service.
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CHAPTER 1

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90-1-607. Review of proposal challenges — approval.
90-1-608. Implementation.
90-1-609. Montana broadband infrastructure accounts.

Chapter Cross-References

Laws to protect, enhance, and develop all agriculture, Art. XII, sec. 1(1), Mont. Const.
The Planned Community Development Act of 1973, Title 7, ch. 2, part 47.
Business improvement districts, Title 7, ch. 12, part 11.
Parking, Title 7, ch. 14, part 46.
Urban renewal, Title 7, ch. 15, parts 42 and 43.
Municipal housing authorities, Title 7, ch. 15, parts 44 and 45.
Business incubator tax exemption, Title 15, ch. 24, part 18.
Montana economic development fund, 17-6-331.

Cooperation regarding development of certain parks and historic sites, 23-1-107.
Development of outdoor recreational resources, Title 23, ch. 2, part 1.
Montana development corporation — organization, Title 32, ch. 4, part 2.
Small tract financing, Title 71, ch. 1, part 3.
Montana Environmental Policy Act, Title 75, ch. 1.
Montana Major Facility Siting Act, Title 75, ch. 20.
City-County Planning Boards, Title 76, ch. 1.
Planning and zoning, Title 76, ch. 2.
Comprehensive planning — open space land, Title 76, ch. 6.
Montana Natural Areas Act of 1974, Title 76, ch. 12, part 1.
Development of state lands generally, Title 77, ch. 1, part 6.
Mineral, coal, oil, and gas development on state lands, Title 77, ch. 3.
Development of renewable resources on state lands, Title 77, ch. 4.
Water resource development, Title 85, ch. 1.

Part 1
Planning and Economic Development

90-1-101. Declaration of necessity and public policy. (1) It is hereby declared to be a necessity and the public policy of the state to promote, stimulate, and encourage the planning and development of the economy of the state in order to provide for the social and economic prosperity of its citizens. Such promotion and development of industry, commerce, agriculture, labor, and natural resources of the state require that cognizance be taken of the continuing migration of people to the urban areas in search of job opportunities and the fact that Montana is making a needed transition to a diversified economy. Community planning, greater diversification of industry and attraction of additional industry, accelerated development of natural resources, expansion of existing industry, creation of new uses for agricultural products, greater emphasis on scientific research, development of new markets for the products of the state, and the attainment of a proper balance in the overall economic base, without leaving behind those who remain in rural areas, are all necessary in order to create additional employment opportunities, increase personal income, retain quality of life for rural Montana, and promote the general welfare of the people of this state.

(2) The legislature recognizes that consistency and continuity in the adoption and application of environmental rules are essential to the protection and enhancement of Montana's economic well-being, that consistency and continuity are particularly important to those persons who have made a financial commitment after completing an application for an environmental permit based on the existence of certain environmental rules, and that those persons are entitled to a reasonable expectation that requirements in such a permit will not be changed to their detriment. Therefore, when a person makes a financial commitment after having completed an application for an environmental permit, it is the policy of the state not to change the requirements for such permit to the detriment of the applicant or permittee without having first taken into account and given consideration to previous expenditures made by the applicant or permittee.

(3) The department of commerce shall be regarded as performing a governmental function in carrying out the provisions of 90-1-102 through 90-1-109.

History: En. Sec. 2, Ch. 19, L. 1967; amd. Sec. 82, Ch. 348, L. 1974; amd. Sec. 43, Ch. 213, L. 1975; R.C.M. 1947, 82-3702; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 1, Ch. 679, L. 1983; amd. Sec. 3, Ch. 363, L. 2019.

Cross-References

Montana Environmental Policy Act, Title 75, ch. 1.
Air quality permits, 75-2-211.
Water quality permits, Title 75, ch. 5, part 4.
Montana Major Facility Siting Act, Title 75, ch. 20.

90-1-102. Functions of department of commerce — state planning. The department of commerce shall:

(1) make economic and social studies needed to accomplish the purposes of this part;

(2) coordinate and assist regional development groups in the comprehensive development of the resources of the region to the betterment of Montana;

(3) assemble and correlate information for the purpose of making long-range plans for economic and resource development of the state and its subdivisions relating to all of the factors that influence the development of new and existing economic enterprises, including taxes and the regulation of industry;

(4) provide advice and assistance to Montana business and labor in the field of economic development and bring to the attention of the governor those significant problems adversely affecting economic development that may be relieved by state action;

(5) locate and maintain information on prime sites for industrial, agricultural, mineral, forestry, commercial, and residential development and on sites of historical importance and make recommendations for protecting and preserving those sites;

(6) apply for, accept, and administer grants from the federal government or other public or private sources to accomplish the objectives of this part and enter into contracts, including agreements with adjoining states, with respect to planning involving adjoining states;

(7) serve as the consultative, coordinating, and advisory agency for state departments, officials, and agencies in state planning and for encouraging and aiding local planning bodies, either directly or by securing planning assistance, consulting services, and technical aid, which may include land use, demographic, and economic studies and surveys and comprehensive plans.

History: En. Sec. 5, Ch. 19, L. 1967; amd. Sec. 83, Ch. 348, L. 1974; amd. Sec. 44, Ch. 213, L. 1975; R.C.M. 1947, 82-3705; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 1, Ch. 148, L. 1993.

Cross-References

Department of Commerce, Title 2, ch. 15, part 18.
Preservation of antiquities, Title 22, ch. 3, part 4.
Cooperation of other agencies, 23-1-107.
Montana development corporation — organization, Title 32, ch. 4, part 2.
Montana Major Facility Siting Act, Title 75, ch. 20.
Planning and zoning, Title 76, ch. 2.
Comprehensive planning — open-space land, Title 76, ch. 6.
Development of state lands, Title 77, ch. 1, part 6.
Development of renewable resources on state lands, Title 77, ch. 4.
Water resources, Title 85, ch. 1.
Cooperative agreements for research, training, and other projects, 87-1-210.

90-1-103. Functions of department of commerce — community development. (1) The department of commerce shall:

(a) cooperate with and provide technical assistance to county, municipal, state, and regional planning commissions, zoning commissions, parks or recreation boards, community development groups, community action agencies, and similar agencies created for the purposes of aiding and encouraging orderly, productive, and coordinated development of the communities of the state;

(b) assist the governor in coordinating the activities of state agencies that have an impact on solution of community development problems and implementation of community plans;

(c) serve as a clearinghouse for information, data, and other materials that may be helpful or necessary to local governments to discharge their responsibilities and provide information on available federal and state financial and technical assistance;

(d) carry out continuing studies and analyses of the problems faced by communities within the state and develop those recommendations for administrative or legislative action as appear necessary. In carrying out the studies and analyses and in providing technical assistance to communities, the department shall pay particular attention to the planning and financing of public facilities and to the problems of metropolitan, suburban, and other areas in which economic and population factors are rapidly changing.

(e) administer the federal community development block grant program and adopt rules to implement the program.

(2) In partial fulfillment of its duties under subsection (1), by January 1, 2003, the department shall have developed and published examples of subdivision regulations that provide incentives for and remove disincentives to cluster development. The examples need not be limited to the local option cluster development regulations authorized in 76-3-509 and may include any cluster development regulations that are authorized under Title 76, chapter 3. In developing the examples of regulations, the department shall seek the advice of interested parties. The department shall provide technical assistance to local governments that are developing cluster development regulations, as provided in subsection (1)(a).

History: En. 82-3705.1 by Sec. 84, Ch. 348, L. 1974; amd. Sec. 45, Ch. 213, L. 1975; R.C.M. 1947, 82-3705.1; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 1, Ch. 230, L. 1985; amd. Sec. 2, Ch. 148, L. 1993; amd. Sec. 9, Ch. 348, L. 2001.

Cross-References

Adoption of rules — Montana Administrative Procedure Act, Title 2, ch. 4.
Department of Commerce, Title 2, ch. 15, part 18.
The Planned Community Development Act of 1973, Title 7, ch. 2, part 47.
Urban renewal, Title 7, ch. 15, parts 42 and 43.
Municipal housing authorities, Title 7, ch. 15, parts 44 and 45.
City-County Planning Boards, Title 76, ch. 1.
Planning and zoning, Title 76, ch. 2.

90-1-104. Functions of department of commerce — recreational development. The department of commerce shall:

(1) exercise state responsibility for that part of recreational planning and development that is directly related to private investment in recreational facilities;

(2) assemble and correlate information that may influence the development of recreational enterprises and disseminate it to persons, firms, or corporations interested in constructing or maintaining recreational facilities open to the public; and

(3) coordinate the promotion of Indian tourism activities in the state in cooperation with the seven tribal governments and the state director of Indian affairs.

History: En. 82-3705.2 by Sec. 85, Ch. 348, L. 1974; amd. Sec. 46, Ch. 213, L. 1975; R.C.M. 1947, 82-3705.2; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 1, Ch. 452, L. 1987; amd. Sec. 2, Ch. 301, L. 1991; amd. Sec. 1, Ch. 30, L. 2007; amd. Sec. 7, Ch. 164, L. 2009.

Cross-References

Department of Commerce, Title 2, ch. 15, part 18.
Tourism Advisory Council, 2-15-1816.
Development of outdoor recreational resources, Title 23, ch. 2, part 1.
Acquisition and sale of lands or waters, 87-1-209.
Indian affairs — planning and coordination, Title 90, ch. 11.

90-1-105. Functions of department of commerce — economic development. The department of commerce shall:

(1) provide coordinating services to aid state and local groups and Indian tribal governments in the promotion of new economic enterprises and conduct publicity and promotional activities within the state, nationally, and internationally in connection with new economic enterprises;

(2) collect and disseminate information regarding the advantages of developing agricultural, recreational, commercial, and industrial enterprises within this state;

(3) serve as an official state liaison between persons interested in locating new economic enterprises in Montana and state and local groups and Indian tribal governments seeking new enterprises;

(4) aid communities and Indian tribal governments interested in obtaining new business or expanding existing business;

(5) (a) study and promote means of expanding markets for Montana products within the state, nationally, and globally; and

(b) provide training and assistance for Montana small businesses and entrepreneurs to expand markets for made-in-Montana products;

(6) encourage and coordinate public and private agencies or bodies in publicizing the facilities and attractions of the state;

(7) in collaboration with the state-tribal economic development commission, tribal governments, and other partners, develop a system for the gathering of data allowing the department to quantify on an ongoing basis the economic contributions of the tribes in Montana. The department may execute data sharing and use agreements with each tribal government. The department shall update the state-tribal relations committee on this effort and, beginning no later than December 1, 2024, and in a manner beneficial to tribal governments, policymakers, and the public, make aggregate data on the economic contributions of the tribes in Montana readily available on an ongoing basis. Disaggregated data provided by a tribal government pursuant to a data sharing and use agreement with the department and identified by the tribal government as confidential must be considered "confidential information" as defined in 2-6-1002(1)(d). The department may accept contributions and donations from individuals and organizations for the purposes of this subsection.

(8) explore the use of cooperative agreements, as provided in Title 18, chapter 11, part 1, for the promotion and enhancement of economic opportunities on the Indian reservations in Montana; and

(9) assist the state-tribal economic development commission established in 90-1-131 in:

(a) identifying federal government and private sector funding sources for economic development on Indian reservations in Montana; and

(b) fostering and providing assistance to prepare, develop, and implement cooperative agreements, in accordance with Title 18, chapter 11, part 1, with each of the tribal governments in Montana.

History: En. 82-3705.3 by Sec. 86, Ch. 348, L. 1974; amd. Sec. 47, Ch. 213, L. 1975; R.C.M. 1947, 82-3705.3; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 3, Ch. 301, L. 1991; amd. Sec. 12, Ch. 512, L. 1999; amd. Sec. 1, Ch. 248, L. 2005; amd. Sec. 4, Ch. 363, L. 2019; amd. Sec. 1, Ch. 474, L. 2019; amd. Sec. 131, Ch. 261, L. 2021; amd. Sec. 2, Ch. 594, L. 2023.

Cross-References

Laws to protect, enhance, and develop all agriculture, Art. XII, sec. 1(1), Mont. Const.
Department of Commerce, Title 2, ch. 15, part 18.
Montana University System — agricultural-related research, 20-25-222 through 20-25-232.
Montana development corporation — organization, Title 32, ch. 4, part 2.
Montana Environmental Policy Act, Title 75, ch. 1.
Montana Major Facility Siting Act, Title 75, ch. 20.
Development of state lands, Title 77, ch. 1, part 6.
Mineral, coal, oil, and gas development on state lands, Title 77, ch. 3.
Development of renewable resources on state lands, Title 77, ch. 4.
Agricultural marketing, Title 80, ch. 11, part 1.
Wheat research and marketing, Title 80, ch. 11, part 2.
Water resource development, Title 85, ch. 1.
Advice and information by Department of Commerce, 90-5-113.
Indian affairs — planning and coordination, Title 90, ch. 11.

90-1-106. Functions of department of commerce — housing. The department may:

(1) survey and investigate housing needs throughout the state and publish the results and make recommendations to the governor and the legislature as to legislation and other measures necessary, desirable, or advisable to alleviate housing problems;

(2) maintain and disseminate information on available governmental housing assistance programs, eligibility and development requirements, and other similar information; and

(3) promote research and development in housing planning design, production, conservation, rehabilitation, and other matters relating to, or affecting the provision of decent, safe, and sanitary housing in a suitable living environment.

History: En. 35-526 by Sec. 27, Ch. 461, L. 1975; amd. Sec. 3, Ch. 163, L. 1977; R.C.M. 1947, 35-526.

Cross-References

Urban renewal, Title 7, ch. 15, parts 42 and 43.
Municipal housing authorities, Title 7, ch. 15, parts 44 and 45.
Planning and zoning, Title 76, ch. 2.

90-1-107. Contracts and agreements for projects and programs — cooperation with other agencies. (1) The department of commerce may contract for consulting services for the purpose of undertaking and conducting planning and study projects. It may make agreements with other state agencies in order to accomplish its own research programs. It may perform research, but when possible shall make full use of and strengthen the research resources of other state agencies, including the university system. Other state agencies shall provide the department with information which will assist it in carrying out this part.

(2) The department shall assist and cooperate with other state agencies and officials, with official organizations of elected officials in the state, with local governments and officials, and with federal agencies and officials in carrying out the functions and duties of the department.

(3) It may consult with private groups and individuals, and if the department considers it desirable, hold public hearings to obtain information for the purposes of carrying out this part.

History: En. Sec. 6, Ch. 19, L. 1967; amd. Sec. 87, Ch. 348, L. 1974; R.C.M. 1947, 82-3706; amd. Sec. 6, Ch. 274, L. 1981.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.
Montana University System — research programs, 20-25-108.
Department of Fish, Wildlife, and Parks to cooperate with other agencies, 23-1-107.

90-1-108. Repealed. Sec. 34, Ch. 13, Sp. L. August 2002.

History: En. 82-3710 by Sec. 14, Ch. 502, L. 1975; amd. Sec. 4, Ch. 540, L. 1977; R.C.M. 1947, 82-3710; amd. Sec. 1, Ch. 51, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 1, Ch. 78, L. 1985; amd. Sec. 45, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 199, L. 1995; amd. Sec. 75, Ch. 509, L. 1995.

90-1-109. State census and economic information center. The department of commerce shall, in cooperation with other state, federal, and local agencies, establish and maintain a central depository of information, including computer-retrievable files, concerning the significant characteristics of the state, its people, economy, land, and physical characteristics. The department shall:

(1) analyze and disseminate this information to state, federal, and local agencies and to the general public; and

(2) perform the duties assigned to the state census and economic information center in 5-1-201 through 5-1-206.

History: En. Sec. 13, Ch. 274, L. 1981; amd. Sec. 3, Ch. 114, L. 1983; amd. Sec. 7, Ch. 233, L. 2023.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Districting and apportionment, Art. V, sec. 14, Mont. Const.
Public records, Title 2, ch. 6.
Commission to redistrict and reapportion, 5-1-101.
Inmate data for redistricting, Title 5, ch. 1, part 2.
Montana University System — research programs, 20-25-108.

90-1-110. Exemption from environmental review. The department of commerce, the state-tribal economic development commission, and heritage preservation and cultural tourism commissions created as provided in 90-1-162 are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing grants or loans, administering a grant or loan program, or creating a grant or loan program related to agritourism, heritage and cultural tourism, business investments in historic downtown and commercial areas, Montana-based films, regional development corporations, sites and programs associated with the Lewis and Clark expedition, small businesses, or tourism pursuant to this part.

History: En. Sec. 4, Ch. 442, L. 2025.

Compiler's Comments

Effective Date: Section 12, Ch. 442, L. 2025, provided: "[This act] is effective July 1, 2025."

90-1-111 reserved.

90-1-112. Policy — purpose. (1) It is the policy of this state to:

(a) strengthen the foundations of the state's business environment and diversify and expand existing economic endeavors to achieve long-term economic stability;

(b) cooperate with business enterprises, local governments, other public organizations, and the federal government and use all practical means and measures, including financial and technical assistance, to:

(i) establish an economic climate in which the state's natural resources and agricultural operations remain constant contributors to the state's economic welfare;

(ii) articulate a coherent economic development vision for the future, taking into account both rural and urban demands and the availability of entrepreneurs who, due to lack of economic development resources, might benefit from this policy; and

(iii) take a proactive role to ensure that Montana has the flexibility and resources to be an effective competitor in the changing global marketplace.

(2) The purpose of 2-15-218, 2-15-219, and 90-1-112 through 90-1-114 is to provide a vision and a direction through the development of strategies and initiatives to ensure that the state's role in expanding the economy takes place in an orderly and effective manner.

History: En. Sec. 1, Ch. 483, L. 2001; amd. Sec. 19, Ch. 537, L. 2005; amd. Sec. 2, Ch. 309, L. 2009; amd. Sec. 5, Ch. 363, L. 2019.

90-1-113. Cooperation of state agencies. (1) State agencies that have economic development responsibilities shall cooperate with the office of economic development and provide information, technical expertise, and other assistance when requested by the office of economic development.

(2) On written request to the director of revenue or a designee of the director, the department of revenue shall furnish to the department of commerce information about debt assigned to the department of revenue for offset or collection pursuant to the terms of Title 17, chapter 4, part 1. The written request must include an authorized release form signed by

the taxpayer. The information provided to the department of commerce must be used for the purposes of preventing and detecting fraud or abuse and determining eligibility for grants or loans.

History: En. Sec. 4, Ch. 483, L. 2001; amd. Sec. 3, Ch. 76, L. 2015.

90-1-114. Rulemaking authority. (1) The office of economic development may adopt rules to implement the provisions of 2-15-218, 2-15-219, 90-1-112, 90-1-113, and this section. The rules must include but are not limited to:

(a) criteria for providing assistance to communities; and

(b) coordinating economic development efforts among other state agencies, Montana tribal governments, private enterprise, federal agencies, and local governments.

(2) The office may adopt rules necessary to administer the duties and responsibilities of the office.

History: En. Sec. 5, Ch. 483, L. 2001; amd. Sec. 7, Ch. 190, L. 2003.

90-1-115. Repealed. Sec. 2, Ch. 704, L. 2025.

History: En. Sec. 3, Ch. 223, L. 2005.

90-1-116. State matching funds program for economic development—distribution of proceeds — criteria for grants — local economic development matching funds. (1) As used in this section, the following definitions apply:

(a) "Certified regional development corporation" means a private, nonprofit corporation that has been designated by the department through a competitive process to manage and administer funds and programs for the department on a regional basis.

(b) "Department" means the department of commerce provided for in 2-15-1801.

(c) "Treasure community" means a community that meets and maintains requirements for certification established by the department and administered by the certified regional development corporation.

(2) The department shall create a program to provide state funds to match local economic development funds and to fund up to 12 certified regional development corporations. The provision of state matching funds is contingent upon specific appropriations to the department for that purpose.

(3) An assistance grant to a certified regional development corporation will be made based on rules adopted by the department for the state matching funds program. The rules for distribution of funds must include consideration of:

(a) the size of the geographic area represented by the certified regional development corporation;

(b) the number of communities served by the certified regional development corporation;

(c) the population served by the certified regional development corporation; and

(d) the services offered by the certified regional development corporation.

(4) To be eligible to receive a grant, a certified regional development corporation:

(a) must be designated as the certified regional development corporation by the department;

(b) shall maintain department requirements for certification;

(c) shall match each $1 of the grant with $1 raised from public or private sources;

(d) shall administer the treasure community designation and reporting process for the communities and counties in the region;

(e) shall encourage and organize full participation in regional economic development activities, meetings, projects, and planning by the treasure communities in the region; and

(f) shall deliver services and resources to the citizens, businesses, and treasure communities throughout the region.

(5) Grants under this section must be used to conduct economic development programs consistent with strategic plans that are adopted by the certified regional development corporations and the treasure communities in the region and that are filed with the department.

History: En. Sec. 1, Ch. 531, L. 1993; amd. Sec. 1, Ch. 268, L. 1999; amd. Sec. 4, Ch. 351, L. 2003; amd. Sec. 1, Ch. 471, L. 2019.

90-1-117. Small business state matching grant program — purpose. (1) There is a small business state matching grant program established within the department of commerce to provide guidelines and state matching grants to businesses meeting the criteria in 90-1-118 that have received phase I funding for federal small business innovative research grants or small business technology transfer grants and that are applying for phase II federal small business innovative research grants or small business technology transfer grants.

(2) The state matching grants available for the small business state matching grant program are from any funds received for the program or appropriated to the program by the legislature.

(3) The purpose of the program is to foster job creation and economic development in the state by providing state matching grants to eligible businesses meeting the criteria described in 90-1-118.

History: **En. Sec. 1, Ch. 215, L. 2009.**

90-1-118. Small business eligibility criteria. (1) To be eligible for a state matching grant under 90-1-117 through 90-1-119, a business shall provide evidence to the department of commerce that the business meets all of the following criteria:

(a) the business is a for-profit sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation registered with the secretary of state under Title 35 and has its principal place of business in this state;

(b) the business has received a phase I award under a small business innovative research grant or small business technology transfer grant from a participating federal agency in response to a specific federal solicitation;

(c) the business meets all federal eligibility requirements for a small business innovative research grant or a small business technology transfer grant;

(d) the business is not concurrently receiving funding from other state funding programs that duplicate the purpose stated in 90-1-117;

(e) the business certifies that at least 51% of the research described in the business's proposal for phase II funding under a small business innovative research grant or small business technology transfer grant is to be conducted in this state and that the business will remain a Montana-based business for the duration of a phase II project under a small business innovative research grant or small business technology transfer grant; and

(f) the business demonstrates an ability to conduct research for the business's phase II proposal under the small business innovative research grant or small business technology transfer grant.

(2) As provided in 30-20-206, manufacturing ammunition components is a qualified economic development purpose.

History: **En. Sec. 2, Ch. 215, L. 2009; amd. Sec. 10, Ch. 440, L. 2015.**

90-1-119. Grant award guidelines. (1) The department of commerce may award grants of no more than $100,000 to a business meeting the criteria in 90-1-118.

(2) A business may receive a state matching grant for each separate project that is submitted under a federal small business innovative research grant or small business technology transfer grant.

(3) (a) Upon application from a business that has met the criteria in 90-1-118, the department may award up to 50% of the grant.

(b) To receive the remaining 50% of the state matching grant, the business shall submit to the participating federal agency, with copies to the department of commerce, a final phase I project report, a letter of support from the sponsoring agency indicating that the sponsoring agency is interested in the phase II proposal, and an application for phase II funding. The remaining 50% of the state matching grant is not contingent upon approval of the phase II project by the participating federal agency.

(c) Upon receipt of the documents listed in subsection (3)(b) and verification by the business of a submitted phase II application to the participating federal agency, the department of commerce shall remit to the business the remaining 50% of the grant to be provided under 90-1-117 through 90-1-119.

(4) A business applying for a state matching grant under 90-1-117 through 90-1-119 shall submit on a form prescribed by the department of commerce an application that contains:
(a) the name of the business, the form of business organization that is registered with the secretary of state, and the names and addresses of the principals or management of the business;
(b) proof of receipt of a phase I award under a federal small business innovative research grant or a federal small business technology transfer grant; and
(c) any other information required by the department of commerce by rule.

History: En. Sec. 3, Ch. 215, L. 2009.

90-1-120. Trade activities. The department of commerce through its state trade expansion program or an equivalent program shall:
(1) promote the state through trade show delegations at key events regionally, nationally, and globally;
(2) work with the Montana agriculture development council, the tourism advisory council, the Montana manufacturing extension center, the state workforce innovation board, and other state and national entities to improve funding for and access to supportive services for rural-based, veteran-owned, minority-owned, and women-owned businesses;
(3) work with local chambers of commerce, the governor's office of economic development, certified regional development corporations, and other economic development organizations in this state to inform citizens in this state in the most cost-effective manner possible of the services available through the department.

History: En. Sec. 1, Ch. 363, L. 2019; amd. Sec. 1, Ch. 167, L. 2021.

90-1-121. Gap financing program — interest and investment. The gap financing program account consists of money deposited in the account from an appropriation in Chapter 400, Laws of 2015, and money from any other source. Any interest earned by the account must be deposited in the account and used to sustain the program.

History: En. Sec. 1, Ch. 16, L. 2023.

90-1-122. Repealed. Sec. 6, Ch. 605, L. 2025.

History: En. Sec. 1, Ch. 699, L. 2023.

90-1-123 through 90-1-129 reserved.

90-1-130. Short title. Sections 90-1-130 through 90-1-135 may be cited as the "Native American Economic Development Act of 1999".

History: En. Sec. 1, Ch. 512, L. 1999.

90-1-131. State-tribal economic development commission — composition — compensation for members. (1) There is a state-tribal economic development commission administratively attached to the department of commerce as prescribed in 2-15-121.

(2) The commission is composed of 11 members, each appointed by the governor to 3-year staggered terms commencing on July 1 of each year of appointment, and must include:
(a) the state director of Indian affairs;
(b) one member from the department of commerce;
(c) one member from the governor's office of economic development; and
(d) one member from each of the federally recognized Indian tribes in Montana. A tribal government may advertise for individuals interested in serving on the commission and develop a list of applicants from which it may choose its nominee to recommend to the governor. In place of choosing from a list of applicants, a tribal government may select an elected tribal official to recommend for membership on the commission. If a tribal government nominates or otherwise recommends more than one person for membership on the commission, the governor shall select one individual from among those recommended persons.

(3) The members of the commission shall elect a presiding officer from among the members.

(4) Six members of the commission constitute a quorum, and the affirmative vote of the majority of the members present is sufficient for any action taken by the commission.

(5) Any vacancy on the commission must be filled in the same manner as the original appointment.

(6) Each member of the commission is entitled to reimbursement for expenses as provided in 2-18-501 through 2-18-503.

History: En. Sec. 2, Ch. 512, L. 1999; amd. Sec. 1, Ch. 69, L. 2001; amd. Sec. 1, Ch. 460, L. 2005; amd. Sec. 1, Ch. 453, L. 2007; amd. Sec. 8, Ch. 164, L. 2009; amd. Sec. 10, Ch. 240, L. 2021.

90-1-132. Commission purposes — duties and responsibilities. (1) The general purposes of the state-tribal economic development commission include:

(a) assisting, promoting, encouraging, developing, and advancing economic prosperity and employment on Indian reservations in Montana by fostering the expansion of business, manufacturing, tourism, agriculture, and community development programs;

(b) cooperating and acting in conjunction with other organizations, public and private, to benefit tribal communities;

(c) recruiting business enterprises to locate on or invest in enterprises on the reservations; and

(d) identifying, obtaining, and coordinating federal, state, and private sector gifts, grants, loans, and donations to further economic development on the Indian reservations in Montana.

(2) The state-tribal economic development commission shall:

(a) in conjunction with the tourism advisory council provided for in 2-15-1816, oversee use of proceeds to expand tourism activities and visitation in the Indian tourism region;

(b) determine the availability of federal, state, and private sector gifts, grants, loans, and donations to tribal governments, Indian business enterprises, and communities located on Indian reservations in Montana;

(c) apply for grants listed in the Catalog of Federal Domestic Assistance for which the commission is eligible and which would, if awarded, supply identifiable economic benefits to any or all of the Indian reservations in Montana;

(d) in cooperation with a tribal government, and when allowed by federal law and regulation, assist the tribe in applying for grants listed in the Catalog of Federal Domestic Assistance for which an appropriate tribal entity is eligible and which would, if awarded, supply identifiable economic benefits to any or all of the Indian reservations in Montana;

(e) evaluate the apportionment of current spending of federal funds by state agencies in areas including but not limited to economic development, housing, community infrastructure, business finance, tourism promotion, transportation, and agriculture;

(f) notify tribal governments, the governor, the state director of Indian affairs, and the directors of the departments of commerce, agriculture, and transportation, of the availability of specific federal, state, or private sector funding programs or opportunities that would directly benefit Indian communities in Montana;

(g) assist tribal governments and other tribal entities that are eligible for federal assistance programs as provided in the most recent published edition in the Catalog of Federal Domestic Assistance in applying for funds that would contribute to the respective tribes' economic development;

(h) work cooperatively with tribal government officials, the state director of Indian affairs, and other appropriate state officials to help foster state-tribal cooperative agreements pursuant to Title 18, chapter 11, part 1, that will:

(i) enhance economic development on the Indian reservations in Montana; and

(ii) help the department of commerce to fully implement and comply with the provisions of 90-1-105; and

(i) provide to the governor, the legislative council, the state-tribal relations committee, the legislative auditor, and to each of the presiding officers of the tribal governments in Montana a biennial report in accordance with 5-11-210 that summarizes the activities of the commission.

History: En. Sec. 3, Ch. 512, L. 1999; amd. Sec. 9, Ch. 164, L. 2009; amd. Sec. 4, Ch. 405, L. 2017; amd. Sec. 132, Ch. 261, L. 2021; amd. Sec. 3, Ch. 594, L. 2023.

90-1-133. Repealed. Sec. 8, Ch. 594, L. 2023.

History: En. Sec. 4, Ch. 512, L. 1999; amd. Sec. 10, Ch. 164, L. 2009.

90-1-134. No waiver of tribal sovereignty. Sections 90-1-105 and 90-1-132 do not constitute or imply any waiver of sovereignty on the part of any of the federally recognized tribes in Montana.

History: En. Sec. 5, Ch. 512, L. 1999; amd. Sec. 4, Ch. 594, L. 2023.

90-1-135. Special revenue accounts. (1) There is a state special revenue account in the state treasury for the receipt of state and private funds and a federal special revenue account in the state treasury for the receipt of federal funds for expenditure by the state-tribal economic development commission established in 90-1-131.

(2) Money in the state special revenue account from proceeds distributed under 15-65-121 and 15-68-820 is to be used for activities for the Indian tourism region, defined in 15-65-101.

(3) Except as provided in subsection (2), money in the accounts established in subsection (1) must be used to pay the commission's administrative costs.

(4) Money in the accounts that is not expended for the purposes identified in subsection (2) or (3) may be used for other purposes that the commission considers prudent or necessary.

(5) Interest and income earned on the money in the accounts must be deposited in the accounts for the commission's use.

History: En. Sec. 6, Ch. 512, L. 1999; amd. Sec. 2, Ch. 69, L. 2001; amd. Sec. 2, Ch. 453, L. 2007; amd. Sec. 5, Ch. 405, L. 2017; amd. Sec. 10, Ch. 356, L. 2019; amd. Sec. 5, Ch. 594, L. 2023; amd. Sec. 6, Ch. 758, L. 2023.

90-1-136 through 90-1-140 reserved.

90-1-141. Short title. Sections 90-1-141 through 90-1-147 may be cited as the "Economic Development Financial Assistance Act".

History: En. Sec. 1, Ch. 307, L. 2001.

90-1-142. Purposes. The purposes of 90-1-141 through 90-1-147 are to:

(1) provide a convenient, accessible, and comprehensive clearinghouse for information about available financial assistance offered by the state, including but not limited to loans, grants, and tax credits;

(2) provide financial assistance for the purpose of establishing financing for economic development activities; and

(3) streamline loan applications and maintain a central clearinghouse of information to ensure an effective and timely response to the needs of individuals, the business community, and governmental entities seeking state financial assistance.

History: En. Sec. 2, Ch. 307, L. 2001.

90-1-143. Definitions. As used in 90-1-141 through 90-1-147, the following definitions apply:

(1) "Center" means the financial assistance center provided for in 90-1-144.

(2) "Financial assistance" means loans, grants, and tax credits or incentive programs offered by the state to facilitate economic development activities and infrastructure development, repair, or replacement.

History: En. Sec. 3, Ch. 307, L. 2001.

90-1-144. Financial assistance center — department responsibilities. (1) There is a financial assistance center within the department of commerce.

(2) The center shall:

(a) compile and include a comprehensive list of all state financial assistance programs, including but not limited to:

(i) eligible recipients;

(ii) conditions required for an award of a loan or grant;

(iii) limits on the amount of funds available;

(iv) application information; and

(v) lending or granting cycles;

(b) maintain and provide information related to nonstate loan and grant programs by cooperating and coordinating with federal loan and grant programs, commercial lenders, and nonprofit economic development lending organizations; and

(c) provide regular opportunities for financial institutions, loan and grant applicants, local economic development organizations, business enterprises, and other federal, state, and local governmental entities to review the center and provide advice and recommendations regarding the expansion or modification of the center.

(3) The department shall:

(a) develop an internet website specifically designed to assist loan and grant applicants in gathering information. The website must, at a minimum, contain the following features:

(i) a prominently placed world wide web link representing the financial assistance programs that allows for multiple methods for website navigation;

(ii) a comprehensive list of the types of loans and grants available from the state, outlined by agency, subject, area, or speciality; and

(iii) an agency-specific loan and grant list with appropriate links to personnel responsible for administering the program;

(b) cooperate with the office of the secretary of state to ensure that rules governing electronic transactions, digital signatures, and digital notary can be applied to electronic loan and grant applications;

(c) provide direct and individual service to interested applicants to ensure that:

(i) adequate information regarding eligibility requirements for financial assistance is received and understood;

(ii) contacts and appointments are made with the various state agencies administering financial assistance programs;

(iii) technical and professional assistance is provided to facilitate the accurate and timely completion of business feasibility plans and financial assistance applications; and

(iv) periodic updates are provided to applicants regarding the status of financial assistance applications and new or emerging financial assistance opportunities;

(d) develop a marketing plan to provide information about the center to individuals, commercial financial institutions, local economic development organizations, business enterprises, and local governments;

(e) coordinate with the department of revenue to provide:

(i) information related to applicable business licensing and registration requirements; and

(ii) relevant information related to tax credits and tax incentive programs for economic development activities;

(f) collect and maintain a supply of loan and grant application forms and information for all state loans and grants and actively assist interested applicants in answering application questions;

(g) collect and maintain a master list of state loan opportunities by type of loan, eligibility requirements, lending cycles, and availability; and

(h) review rules, application forms and processes, and lending cycles of loan and grant programs administered by other state agencies and make recommendations to those agencies related to the development of uniform loan and grant requirements.

(4) The department may gather and disseminate information related to nonstate loan sources and perform other administrative tasks delegated to the department to improve state lending processes and loan and grant program administration.

(5) The department shall work with other state agencies as provided in 90-1-145, particularly with the department of agriculture, the department of labor and industry, the department of military affairs, and the governor's office of economic development in promoting marketing, trade assistance, and workforce development, with an emphasis on rural-based, veteran-owned, minority-owned, and women-owned businesses.

History: En. Sec. 4, Ch. 307, L. 2001; amd. Sec. 6, Ch. 363, L. 2019.

90-1-145. Cooperation between state agencies and department — dissemination of information. (1) State agencies administering financial assistance programs shall cooperate with the department of commerce in providing information for the center.

(2) The department shall include all of the information received from other agencies in the center.

History: En. Sec. 5, Ch. 307, L. 2001.

90-1-146. Information coordination. (1) The department shall encourage and invite the federal government, local governments, other political subdivisions, local economic development corporations, and private financial institutions to make lending information available to the department of commerce.

(2) The department may, when practical, provide persons with information from other lenders when requested.

History: En. Sec. 6, Ch. 307, L. 2001.

90-1-147. Rulemaking. The department of commerce may adopt rules to:

(1) provide for uniform loan and grant applications, when appropriate;

(2) coordinate the announcement and marketing of available financial assistance programs that are administered by other state agencies;

(3) provide for the specific requirements necessary to develop useful and logical navigation pathways and cross-references for a financial assistance program internet website and a standard form of internet links and access, consistent with the financial assistance program website, for individual agency websites that administer financial assistance programs; and

(4) develop processes and procedures necessary to effectively implement the provisions of 90-1-117 through 90-1-119 and 90-1-141 through 90-1-147.

History: En. Sec. 7, Ch. 307, L. 2001; amd. Sec. 4, Ch. 215, L. 2009.

90-1-148 through 90-1-150 reserved.

90-1-151. Main street program — establishment — purpose — rulemaking. (1) There is a main street program in the department of commerce developed in conjunction with the main street program of the national trust for historic preservation.

(2) The purpose of the program is to:

(a) assist communities in restoring and retaining the historic character of their downtown areas and historic commercial districts;

(b) stimulate business investment, assist in retaining existing small businesses, and promote new businesses in those areas;

(c) strengthen the local tax base;

(d) create employment opportunities in community downtown areas and historic districts; and

(e) generally enhance the economic viability of downtown areas and historic districts.

(3) (a) The department of commerce may adopt rules governing the operation of the main street program.

(b) In developing the rules, the department shall consult with the national trust for historic preservation, provided for in 16 U.S.C. 468, to ensure that Montana's main street program is consistent with the main street program operated by the national trust for historic preservation.

History: En. Sec. 1, Ch. 181, L. 2005.

90-1-152 and 90-1-153 reserved.

90-1-154. Short title. Sections 90-1-154 through 90-1-159 may be cited as the "Montana-Ireland Trade Development Act".

History: En. Sec. 2, Ch. 19, L. 2025.

Compiler's Comments

Effective Date: Section 9, Ch. 19, L. 2025, provided: "[This act] is effective July 1, 2025."

90-1-155. Definitions. As used in sections 90-1-154 through 90-1-159, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Commission" means the Montana-Ireland trade commission established in 2-15-1839.

(2) "Department" means the department of commerce established in 2-15-1801.

History: En. Sec. 3, Ch. 19, L. 2025.

Compiler's Comments

Effective Date: Section 9, Ch. 19, L. 2025, provided: "[This act] is effective July 1, 2025."

90-1-156. Purposes — fundraising. (1) The purposes of the commission are to:

(a) advance bilateral trade and investment between Montana and Ireland;

(b) initiate joint action on issues of mutual interest to Montana and Ireland;

(c) promote business and academic exchanges between Montana and Ireland;

(d) encourage mutual economic support between Montana and Ireland;

(e) encourage mutual investment in the infrastructure of Montana and Ireland; and

(f) address any other issues deemed to be of mutual benefit to Montana and Ireland.

(2) The commission may raise funds through direct solicitation or other fundraising events, alone or with other groups, and may accept gifts, grants, and donations to carry out its purpose.

History: En. Sec. 4, Ch. 19, L. 2025.

Compiler's Comments
Effective Date: Section 9, Ch. 19, L. 2025, provided: "[This act] is effective July 1, 2025."

90-1-157. Meetings — election of officers. (1) (a) The commission shall convene for its first meeting no later than 30 days after all commission members have been appointed.

(b) At the initial meeting of the commission and annually thereafter, the members shall select one member from among the four appointed legislators to serve as the chair.

(2) (a) The commission shall meet as necessary at the call of the chair, subject to the availability of funds in the Montana-Ireland trade development special revenue account provided for in 90-1-158.

(b) A majority of the commission membership constitutes a quorum to do business, and all official actions of the commission require an affirmative vote of a majority of the members present and voting.

(c) The commission may meet and hold hearings at locations it designates throughout the state. Commission meetings, including the first meeting, can be held by electronic means.

(3) The commission shall keep records of all proceedings. The records must be public and open to inspection.

History: En. Sec. 5, Ch. 19, L. 2025.

Compiler's Comments
Effective Date: Section 9, Ch. 19, L. 2025, provided: "[This act] is effective July 1, 2025."

90-1-158. Montana-Ireland trade development special revenue account. (1) There is established in the state treasury the Montana-Ireland trade development special revenue account to the credit of the department. The purposes of the account are to reimburse the department for the administrative expenses of the commission and to support the commission's efforts to carry out its purposes listed in 90-1-156.

(2) The account consists of all funds raised by or on behalf of the commission, together with any gifts, grants, or other donations. Interest on funds credited to the account must remain in the account.

History: En. Sec. 6, Ch. 19, L. 2025.

Compiler's Comments
Effective Date: Section 9, Ch. 19, L. 2025, provided: "[This act] is effective July 1, 2025."

90-1-159. Reporting requirement. On or before September 1 of each year, the Montana-Ireland trade commission shall provide a report to the governor and the legislature, in accordance with 5-11-210. The report must include:

(1) a description of the commission's work, including how often the commission met during the preceding 12 months and the minutes of the commission's meetings;

(2) a description of benefits to the state and to sectors involved in international trade, attributable to the commission's efforts;

(3) recommendations for legislative action that would support trade between the state and Ireland; and

(4) a summary of anticipated commission activities in the ensuing year, including any recommendations or requests that may assist the commission's work.

History: En. Sec. 7, Ch. 19, L. 2025.

Compiler's Comments
Effective Date: Section 9, Ch. 19, L. 2025, provided: "[This act] is effective July 1, 2025."

Cross-References
Clearinghouse for reports to Legislature, 5-11-210.
Reports to Legislature, 5-11-222.

90-1-160. Purpose. The purposes of 90-1-160 through 90-1-164 and 90-1-167 through 90-1-169 are to:

(1) assist the state and local governments in identifying, protecting, and promoting heritage and cultural tourism resources;

(2) further support local preservation programs and encourage participation in the Montana historical society Montana-certified local government program, provided for in 90-1-168;

(3) enhance the ability of localities and agencies to exhibit and advertise the heritage and cultural tourism resources of the state;

(4) stimulate business investment, assist in retaining existing small businesses, and promote new businesses related to heritage and cultural tourism;

(5) strengthen the local tax base;

(6) create employment opportunities for the people of the state; and

(7) generally enhance the economic viability of communities and regions of the state.

History: En. Sec. 4, Ch. 217, L. 2007.

90-1-161. Definitions. As used in 90-1-160 through 90-1-164 and 90-1-167 through 90-1-169, the following definitions apply:

(1) "Heritage and cultural tourism resources" means sites, districts, routes of travel, objects, artifacts, or collections with demonstrable cultural, artistic, architectural, folkway, historic, prehistoric, or traditional qualities.

(2) "Montana historical society" means the entity established pursuant to 22-3-101.

History: En. Sec. 5, Ch. 217, L. 2007.

90-1-162. Heritage preservation and cultural tourism commissions. (1) Counties, consolidated governments, and municipalities may create heritage preservation and cultural tourism commissions or authorize existing historic preservation commissions to conduct heritage preservation and cultural tourism programs according to the provisions of 90-1-160 through 90-1-164 and 90-1-167 through 90-1-169.

(2) A heritage preservation and cultural tourism commission must have at least five members. Commission members must have professional backgrounds and be trained in or have a demonstrated interest in historic preservation, the arts or culture of the locality, and the tourism and economic development interests of the locality.

History: En. Sec. 6, Ch. 217, L. 2007.

90-1-163. Commission duties. (1) A heritage preservation and cultural tourism commission:

(a) may prepare a heritage and cultural tourism promotion and development plan, as provided in 90-1-164, and shall operate according to the provisions of that plan;

(b) must be operated in a manner that allows the county, consolidated government, or municipality to obtain support through grants and other funding assistance available for heritage and cultural tourism promotion and development programs and may solicit, request, and apply for funds;

(c) may own and lease property in its own name and may acquire property through bequest, purchase, lease, or other means except eminent domain;

(d) may hire and supervise staff consistent with the personnel regulations of the county, consolidated government, or municipality;

(e) may solicit, request, and apply for funds in the name of the commission; and

(f) shall identify, record, register, preserve, protect, develop, and promote heritage and cultural tourism resources.

(2) Funds may be budgeted and expended, including by contract, by the heritage preservation and cultural tourism commission in a manner consistent with the laws, rules, and regulations of the county, consolidated government, or municipality.

(3) A heritage preservation and cultural tourism commission shall prepare an annual report describing its activities and file the report with the appropriate county, consolidated government, or municipality.

(4) Upon the dissolution of a heritage preservation and cultural tourism commission, the property of the commission becomes the property of the county, consolidated government, or municipality.

History: En. Sec. 7, Ch. 217, L. 2007.

90-1-164. Heritage and cultural tourism promotion and development plan. (1) A heritage preservation and cultural tourism commission may prepare a heritage and cultural tourism promotion and development plan and shall operate according to the provisions of that plan.

(2) A heritage and cultural tourism promotion and development plan must be created in consultation with the tourism advisory council, the Montana historical society, the Montana arts council, and interested stakeholders, including businesses and institutions that have a

demonstrable interest in cultural tourism, historic preservation, economic development, the arts, and cultural affairs.

(3) A heritage and cultural tourism promotion and development plan:

(a) may include but is not limited to:

(i) inventories of public displays and interpretations of heritage and cultural tourism resources;

(ii) mapping of and guidance to heritage and cultural tourism resources; and

(iii) advertising and promoting heritage and cultural tourism resources, economic development, heritage protection, and heritage incentives; and

(b) may recommend ordinances or resolutions to counties, consolidated governments, and municipalities to assist and protect the qualities of heritage and cultural tourism resources as long as those ordinances are based on uniform standards and procedures.

History: En. Sec. 8, Ch. 217, L. 2007.

90-1-165 and 90-1-166 reserved.

90-1-167. Cultural treasures — coordination. (1) A heritage preservation and cultural tourism commission may designate individuals possessing the highest quality artistic, traditional, or folkway skills, talents, and knowledge as Montana cultural treasures and may conduct programs to honor and promote the individuals with the individuals' express consent and in a manner consistent with administrative rule.

(2) This section may be administered in conjunction with the treasure state living cultural treasures program provided for in 2-15-236 through 2-15-238.

History: En. Sec. 9, Ch. 217, L. 2007.

90-1-168. Certified local governments. (1) Counties, consolidated governments, and municipalities may participate in the Montana-certified local government program administered by the Montana historical society pursuant to the National Historic Preservation Act of 1966, 16 U.S.C. 470 through 470w-6.

(2) A county, consolidated government, or municipality that became a certified local government, as described in subsection (1), prior to July 1, 2007, may participate in the program.

History: En. Sec. 10, Ch. 217, L. 2007.

90-1-169. Highway signs. Upon receipt of a petition from a heritage preservation and cultural tourism commission, the department of transportation shall erect and maintain signs designating heritage and cultural tourism resources along highways in the vicinity of the heritage and cultural tourism resources. The department of transportation shall accomplish the signing changes in accordance with the department's normal sign maintenance and replacement schedule.

History: En. Sec. 11, Ch. 217, L. 2007.

90-1-170 through 90-1-174 reserved.

90-1-175. Rulemaking. The department of commerce may adopt rules to implement the broadband mapping program funded in Chapter 489, Laws of 2009.

History: En. Sec. 56, Ch. 489, L. 2009.

90-1-176 through 90-1-180 reserved.

90-1-181. Functions of department of commerce — socioeconomic advocacy. The department of commerce may, if funds are available, advocate on behalf of local governments, as defined in 7-11-1002, by reviewing, analyzing, and commenting on prospective impacts on local socioeconomic conditions from federal land management proposals.

History: En. Sec. 1, Ch. 245, L. 2011.

90-1-182. State assistance to local governments in review of and comment on federal land management proposals — rulemaking. (1) In carrying out the provisions of 90-1-181, the department of commerce may conduct on behalf of local governments a socioeconomic impact review and analysis of significant federal land management proposals. The department of commerce may use the review and analysis to comment in a timely manner on the federal proposals regarding projected impacts on local government.

(2) The department of commerce may:

(a) establish a minimal procedure for local governments to request from the department a review and analysis of significant federal land management proposals that may have a direct socioeconomic impact on the community for which the local government has requested the review. The request must include sufficient details about the federal land management proposal for the department of commerce to determine a deadline by which the review must be conducted.

(b) contract with a unit of the Montana university system experienced in technical, doctorate-level analysis of the socioeconomic impacts of federal land management proposals to provide an independent economic analysis of the federal proposals; and

(c) advocate on behalf of the local government before the agency issuing the federal land management proposals, using the reports generated under this subsection (2).

(3) The department of commerce may adopt rules to implement this section.

History: En. Sec. 2, Ch. 245, L. 2011; amd. Sec. 133, Ch. 261, L. 2021; amd. Sec. 13, Ch. 460, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 13, Ch. 460, L. 2025. Amendment effective October 1, 2025.

Part 2
Big Sky Economic Development Program

90-1-201. Big sky economic development program — definitions. (1) (a) There is a big sky economic development program that consists of:

(i) the big sky economic development fund established in 17-5-703; and

(ii) the economic development special revenue account provided for in 90-1-205.

(b) Interest and income from the big sky economic development fund may be used to administer the big sky economic development program and to provide financial assistance for qualified economic development purposes under this part.

(2) As used in this part, the following definitions apply:

(a) "Department" means the department of commerce provided for in 2-15-1801.

(b) "Economic development organization" means:

(i) a private, nonprofit corporation, as provided in Title 35, chapter 2, that is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) or 501(c)(6); or

(ii) an entity actively engaged in economic development and business assistance work in a region of the state.

(c) "Eligible business" means a for-profit or nonprofit business or tribally owned business that is engaged in business activities in the state that will provide a significant positive economic impact to the community, region, or state.

History: En. Sec. 2, Ch. 588, L. 2005; amd. Sec. 1, Ch. 104, L. 2007; amd. Sec. 1, Ch. 460, L. 2009; amd. Sec. 1, Ch. 23, L. 2013; amd. Sec. 1, Ch. 375, L. 2019; amd. Sec. 11, Ch. 240, L. 2021; amd. Sec. 5, Ch. 636, L. 2023.

90-1-202. Purpose. (1) The legislature finds and declares that economic development is a public purpose. The purpose of the big sky economic development program is to assist in economic development for Montana that will:

(a) create good-paying jobs for Montana residents;

(b) promote long-term, stable economic growth in Montana;

(c) retain or expand existing businesses;

(d) provide a better life for future generations through greater economic growth and prosperity in Montana; and

(e) encourage workforce development.

(2) As provided in 30-20-206, manufacturing ammunition components is a qualified economic development purpose.

History: En. Sec. 3, Ch. 588, L. 2005; amd. Sec. 2, Ch. 104, L. 2007; amd. Sec. 2, Ch. 460, L. 2009; amd. Sec. 11, Ch. 440, L. 2015; amd. Sec. 6, Ch. 636, L. 2023.

90-1-203. Types of financial assistance available. (1) The department shall provide for and make grants and loans available to eligible businesses for economic development projects from the money in the economic development special revenue account provided for in 90-1-205.

(2) A grant or loan may not be used for a project that would result in the transfer or relocation of jobs from one part of the state to another part of the state.

History: En. Sec. 4, Ch. 588, L. 2005; amd. Sec. 3, Ch. 460, L. 2009; amd. Sec. 7, Ch. 636, L. 2023.

90-1-204. Priorities for funding — rulemaking. (1) Under the big sky economic development program provided for in 90-1-201, the department must receive proposals for grants and loans from eligible businesses and may accept proposals from economic development organizations and preferred lenders on behalf of businesses. Eligible businesses may work with an economic development organization on a proposal. The department shall work with eligible businesses and the economic development organization in preparing cost estimates for a proposed project. In reviewing proposals, the department may consult with other state agencies with expertise pertinent to the proposal.

(2) (a) The department shall adopt rules necessary to implement the big sky economic development program in collaboration with economic development organizations actively serving communities. The department shall consider low-interest loans, forgivable loans, and grants when adopting rules.

(b) The rules must provide for the types of uses of funds available under the big sky economic development program. The types of uses of these funds include but are not limited to:

(i) a reduction in the interest rate of a commercial loan for the expansion of a basic sector company;

(ii) a grant or low-interest loan for relocation expenses for a basic sector company;

(iii) rental assistance or lease buy-downs for a relocation or expansion project for a basic sector company;

(iv) short-term working capital loans;

(v) workforce activities or job creation; and

(vi) planning projects that would provide significant economic benefit to require matching funds to be considered.

(c) The rules must require matching funds for a grant or loan.

(d) The rules may provide for greater incentives for a rural county.

History: En. Sec. 5, Ch. 588, L. 2005; amd. Sec. 3, Ch. 104, L. 2007; amd. Sec. 4, Ch. 460, L. 2009; amd. Sec. 42, Ch. 489, L. 2009; amd. Sec. 2, Ch. 23, L. 2013; amd. Sec. 4, Ch. 330, L. 2021; amd. Sec. 8, Ch. 636, L. 2023.

90-1-205. Economic development special revenue account. (1) There is an economic development state special revenue account. The account receives earnings from the big sky economic development fund as provided in 17-5-703. The money in the account may be used only as provided in this part.

(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department. The money deposited in the account must be used as provided in this part, for administrative expenses, or for other economic development purposes.

History: En. Sec. 6, Ch. 588, L. 2005; amd. Sec. 5, Ch. 460, L. 2009; amd. Sec. 18, Ch. 6, Sp. L. November 2017; amd. Sec. 1, Ch. 558, L. 2021; amd. Sec. 9, Ch. 563, L. 2021; amd. Sec. 9, Ch. 636, L. 2023.

90-1-206. Exemption from environmental review. The department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing grants or loans, administering a grant or loan program, or creating a grant or loan program related to economic development projects pursuant to this part.

History: En. Sec. 5, Ch. 442, L. 2025.

Compiler's Comments

Effective Date: Section 12, Ch. 442, L. 2025, provided: "[This act] is effective July 1, 2025."

Part 3 reserved

Part 4

Montana Geospatial Information Act

90-1-401. Short title. This part may be cited as the "Montana Geospatial Information Act".

History: En. Sec. 1, Ch. 135, L. 2005; amd. Sec. 3, Ch. 110, L. 2023.

90-1-402. Purpose. The purpose of this part is to develop a standardized, sustainable method to collect, maintain, and disseminate information in digital formats about the natural and artificial land characteristics of Montana. Geospatial information changes continuously and is needed by businesses, citizens, governmental entities, and others in digital formats to be most effective and productive. This part will ensure that digital geospatial information is collected consistently, maintained accurately in accordance with standards, and made available in common ways for all potential uses and users, both private and public. Through planning and grant making, this part prioritizes consistent collection, accurate maintenance, and common availability of geospatial information to provide needed, standardized, and uniform geospatial information in digital formats.

History: En. Sec. 2, Ch. 135, L. 2005; amd. Sec. 4, Ch. 110, L. 2023.

90-1-403. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Account" means the Montana geospatial information account created in 90-1-409.

(2) "Council" means the geospatial information advisory council established in 90-1-405.

(3) "Digital format" means information that is scanned, electronically drawn, layered through the GIS, or digitized by other electronic methods.

(4) "Geographic information system" or "GIS" means an organized collection of computer hardware, software, geospatial information, and other resources, including personnel, that is designed to or assists to efficiently collect, maintain, and disseminate all forms of geographically referenced information.

(5) "Geospatial information" means data that describes the geographic location and characteristics of natural or constructed features and boundaries within or pertaining to Montana.

(6) "State librarian" means the executive officer of the state library commission provided for in 22-1-102.

(7) "State library" means the state library provided for in 22-1-201.

History: En. Sec. 3, Ch. 135, L. 2005; amd. Sec. 4, Ch. 175, L. 2013; amd. Sec. 5, Ch. 110, L. 2023.

90-1-404. Geospatial information — management — duties of state library. (1) The state library shall:

(a) serve as the administrator of the account;

(b) work with all stakeholders, including but not limited to federal, state, local, private, and tribal entities, to prioritize needs and collect, develop, maintain, and disseminate geographic information systems, geospatial information, and geospatial technologies;

(c) prepare a geospatial information plan and operate according to the provisions of the plan. The plan:

(i) must be created in consultation with the council;

(ii) may include but is not limited to:

(A) the prioritized needs to collect, maintain, and disseminate geospatial information;

(B) priorities for geospatial coordination; and

(C) priorities for grant awards; and

(iii) must be reviewed and, if appropriate, updated every 3 years.

(d) establish an application process and a granting process that must be used to distribute funds in the account;

(e) review all grant applications;

(f) consider grant recommendations by the council;

(g) monitor a recipient's use of grant funds to ensure that the use of the funds complies with the purposes of this part;

(h) coordinate the development of standards for geographic information systems, geospatial information, and geospatial technologies;

(i) serve as the primary point of contact for national, regional, state, and other GIS coordinating groups for the purpose of channeling issues and projects to the appropriate individual, organization, agency, or other entity;

(j) provide administrative and staff support to the council, including paying the expenses of the council;

(k) annually prepare a budget to carry out the state library's responsibilities described in this section; and

(l) implement the conservation easement information requirements as provided for in 76-6-212.

(2) To fulfill the responsibilities described in subsection (1), the state library or any recipient of funds granted pursuant to this part may contract with a public or private entity.

History: **En. Sec. 4, Ch. 135, L. 2005; amd. Sec. 4, Ch. 352, L. 2007; amd. Sec. 5, Ch. 175, L. 2013; amd. Sec. 6, Ch. 110, L. 2023.**

90-1-405. Geospatial information advisory council — appointments — terms — vacancies — compensation. (1) There is a geospatial information advisory council.

(2) The council is composed of the following members:

(a) the state librarian or the state librarian's designee who shall:

(i) serve as the presiding officer of the council; or

(ii) appoint the presiding officer from among the other members of the council;

(b) the director of the department of administration or the director's designee; and

(c) to be appointed by the governor:

(i) one director of a department established in Title 2, chapter 15, other than the department of administration. The director may designate a person to act in the director's absence.

(ii) two persons who represent county or municipal government, at least one of whom is active in geographic information systems;

(iii) one person who is employed by the federal government;

(iv) one person who is active in geographic information systems and represents private businesses;

(v) one person who represents tribal government interests;

(vi) one person who represents the Montana university system;

(vii) one person who is a member of a Montana association of GIS professionals; and

(viii) one person who represents the interests of a Montana association of registered land surveyors.

(3) Council members shall serve staggered 3-year terms. Each council member may serve a maximum of three terms.

(4) A vacancy on the council must be filled in the same manner as the original appointment, and the person appointed to fill the vacancy shall serve for the remainder of the unexpired term.

(5) (a) A member of the council who is not an employee of the state or a political subdivision of the state is eligible to be reimbursed and compensated as provided in 2-15-122.

(b) A member of the council who is an employee of the state or a political subdivision of the state is not entitled to compensation but is entitled to be reimbursed for expenses, as provided in 2-18-501 through 2-18-503.

History: **En. Sec. 5, Ch. 135, L. 2005; amd. Sec. 6, Ch. 175, L. 2013; amd. Sec. 7, Ch. 110, L. 2023.**

90-1-406. Geospatial information advisory council — duties — advisory only. (1) The council shall:

(a) advise the state library with regard to issues relating to the geographic information systems, geospatial information, and geospatial technologies;

(b) advise the state library on the priority of geospatial information, including data layers, to be developed;

(c) review the geospatial information plan described in 90-1-404 and advise the state library on any element of the plan;

(d) provide recommendations to the state library in determining grants awarded in accordance with this part;

(e) assist in identifying, evaluating, and prioritizing requests received from state agencies, local governments, and tribal government entities to provide development of and maintenance of services relating to the GIS, geospatial information, and geospatial technologies;

(f) promote coordination of programs, policies, technologies, and resources to maximize opportunities, minimize duplication of effort, and facilitate the documentation, distribution, and exchange of geographic information systems, geospatial information, and geospatial technologies; and

(g) advocate for the development of consistent policies, standards, and guidelines for geographic information systems, geospatial information, and geospatial technologies.

(2) The council functions in an advisory capacity, as defined in 2-15-102.

History: En. Sec. 6, Ch. 135, L. 2005; amd. Sec. 7, Ch. 175, L. 2013; amd. Sec. 8, Ch. 110, L. 2023.

90-1-407 and 90-1-408 reserved.

90-1-409. Montana geospatial information account. (1) There is established in the state special revenue fund a Montana geospatial information account.

(2) All money received by the department of revenue pursuant to 7-4-2637(3)(a)(iii) must be deposited in the account.

(3) Funds in the account must be invested pursuant to Title 17, chapter 6, part 2. All interest and income earned on funds in the account accrue to and must be deposited in the account.

History: En. Sec. 7, Ch. 135, L. 2005; amd. Sec. 9, Ch. 110, L. 2023.

90-1-410. Montana geospatial information account — distribution of funds. (1) The state library shall annually prepare a budget to carry out the state library's responsibilities described in 90-1-404. Money in the account may be used to fund all or a portion of the budget or to otherwise accomplish the purposes of this part.

(2) The state library shall ensure that funds distributed under this part are managed by the recipient of the funds according to standards and practices established by the state library to allow for the greatest use and sharing of geographic information systems, geospatial information, or geospatial technologies.

History: En. Sec. 8, Ch. 135, L. 2005; amd. Sec. 8, Ch. 175, L. 2013; amd. Sec. 10, Ch. 110, L. 2023.

90-1-411. Montana geospatial information account — use of funds — action by state library — hearing. (1) Money in the account may be used only for the purposes of this part, including purchasing technology to assist in collecting, maintaining, or disseminating geographic information systems, geospatial information, or geospatial technologies, and funding the budget required under 90-1-410.

(2) The state library may award grant money from the account to a state agency, a local government, or a tribal government entity pursuant to the provisions of 90-1-412 for the purposes of this part.

(3) If the state library determines that a recipient of funds from the account has not used or is not using funds in the manner prescribed by the state library, the state library may, after notice and hearing as provided for in Title 2, chapter 4, suspend further payment to the recipient.

(4) A recipient to whom the state library has suspended payments under this section is not eligible to receive further funds from the account until the state library determines that the recipient is using funds in the manner prescribed by the state library.

History: En. Sec. 9, Ch. 135, L. 2005; amd. Sec. 9, Ch. 175, L. 2013; amd. Sec. 11, Ch. 110, L. 2023.

90-1-412. Geospatial information — grants. (1) A state agency, a local government, or a tribal government entity may apply to the state library for funds in the account. All applicants shall complete an application and provide financial information as established by the state library.

(2) The state library may provide assistance to applicants during the application process.

(3) Grants are contingent on the funds being used for the specified purpose.

(4) The state library may make a grant only if the state library determines that:

(a) the grant is consistent with the findings and purposes of this part, because it primarily adds value to Montana's geospatial information;

(b) the grant is primarily intended to be used for collecting, developing, maintaining, and disseminating geographic information systems, geospatial information, and geospatial technologies;

(c) the project for which the grant is made has prospects for achieving success given the current personnel, experience, and resources of the applicant; and

(d) the applicant has a management structure that allows the council to reasonably conclude that the applicant will comply with ongoing reporting requirements and postdisbursement monitoring activities established by the council.

(5) The state library shall develop reporting procedures to ensure that awarded grants are used for the specified purposes.

History: **En. Sec. 12, Ch. 110, L. 2023.**

90-1-413. Rulemaking. The state library may adopt rules necessary to implement and administer the provisions of this part.

History: **En. Sec. 10, Ch. 135, L. 2005; amd. Sec. 10, Ch. 175, L. 2013; amd. Sec. 13, Ch. 110, L. 2023.**

Part 5
Distressed Wood Products Industry Revolving Loan Program

90-1-501. Revolving loan program for distressed wood products industry — finding. (1) Due to the current, well-documented decline in the wood products industry in Montana, the legislature finds that there is a need to assist the Montana wood products industry as a whole through a revolving loan program.

(2) There is a special revenue account called the distressed wood products industry revolving loan account to the credit of the department of commerce.

(3) (a) The distressed wood products industry revolving loan account consists of money deposited into the account from an appropriation in Chapter 489, Laws of 2009, and money from any other source. Any interest earned by the account must be deposited into the account and used to sustain the program.

(b) Loan repayments and any interest generated from loan repayments must be used as revolving loans for the wood products industry and are subject to the provisions of subsections (5) through (7).

(4) In any biennium, up to 36% of the funds in the distressed wood products industry revolving loan account, not to exceed $2.7 million, may be used as matching funds to secure additional federal money. Federal funds must be deposited in a federal special revenue account and used for loans in accordance with this part. State matching funds must be deposited in a special revenue account called the distressed wood products matching fund.

(5) (a) Funds from the distressed wood products industry revolving loan account may be loaned to:

(i) individuals, including private contractors related to the wood products industry; or

(ii) businesses defined as small businesses pursuant to the regulations promulgated by the United States small business administration pursuant to 13 CFR 121, et seq.

(b) Loans made pursuant to this subsection (5) must be made to individuals or small businesses that are part of the critical, primary wood-processing infrastructure and have suffered economic hardships.

(6) Loans must be used to sustain and grow the wood products industry in Montana. Loans may be used for:

(a) the purchase or lease of land or equipment;

(b) updating infrastructure, including retrofitting of infrastructure to facilitate new uses;

(c) working capital;

(d) debt service;

(e) matching funds for grants or other loans that comply with the intent of this section; or

(f) any other use the department determines would sustain and grow the wood products industry.

(7) (a) A loan may not exceed $2 million, and the loan must be repaid within 15 years.

(b) A loan recipient may apply for another loan pursuant to this section 2 years or more after the date the previous loan was approved.

History: **En. Sec. 1, Ch. 484, L. 2009; amd. Sec. 1, Ch. 205, L. 2013.**

90-1-502. Administration of revolving loan account — rulemaking authority. (1) The department of commerce may adopt rules to implement this part establishing:

(a) eligibility criteria, including demonstrated need, criteria for defining capital investments, feasibility to create and retain jobs, financial capacity to repay the loans, estimated return on investment, and other matters that the department considers necessary to ensure repayment of loans and to encourage maximum use of the account;

(b) terms and conditions for the loans, including repayment schedules and interest; and

(c) a loan application fee.

(2) Loans must be made at a low interest rate. The department may set the interest rate at an amount that will cover its administrative costs, but the rate may not be less than 1% a year. The department may determine terms and conditions of loans, including recovery of funds in the event of default.

History: En. Sec. 2, Ch. 484, L. 2009.

90-1-503. Outcome measures. (1) The department of commerce shall develop reasonable outcome measures by which the success of the distressed wood products industry revolving loan program provided for in this part must be measured on an annual basis. Minimal outcome that must be measured includes:

(a) the uses of loan funds that provided the best overall results; and

(b) a determination of the overall success of the loan program, including but not limited to the number of jobs created or retained, pay levels, financial status, reports on project activities, the growth of a local economy, and the taxable value of property or equipment.

(2) The department may require information from entities receiving loans in order to measure outcome.

(3) In accordance with 5-11-210, the department shall provide a status report of the distressed wood products industry loan account to the economic affairs interim committee provided for in 5-5-223.

History: En. Sec. 3, Ch. 484, L. 2009.

90-1-504. Use of funds — statutory appropriation. Money in the distressed wood products industry revolving loan account, the distressed wood products matching fund, and the related federal special revenue fund is statutorily appropriated, as provided in 17-7-502, for the purpose of administering this part.

History: En. Sec. 4, Ch. 484, L. 2009.

90-1-505. Exemption from environmental review. The department of commerce is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing loans, administering a loan program, or creating a loan program related to the Montana wood products industry pursuant to this part.

History: En. Sec. 6, Ch. 442, L. 2025.

Compiler's Comments

Effective Date: Section 12, Ch. 442, L. 2025, provided: "[This act] is effective July 1, 2025."

Part 6
ConnectMT Act

90-1-601. *(Temporary)* **Short title.** This part may be cited as the "ConnectMT Act". *(Terminates on occurrence of contingency—sec. 9, Ch. 696, L. 2023.)*

History: En. Sec. 1, Ch. 449, L. 2021.

Compiler's Comments

Contingent Termination Revised: Section 9, Ch. 696, L. 2023, amended sec. 13, Ch. 449, L. 2021, by adding a reference to the Infrastructure and Jobs Act of 2021, Public Law 117-58, and substituting "department of administration" for "department of commerce". Effective May 19, 2023.

Contingent Termination: Section 13, Ch. 449, L. 2021, provided: "[Sections 1 through 9] [90-1-601 through 90-1-609] terminate when the budget director certifies to the code commissioner that all funds received from the American Rescue Plan Act of 2021, Public Law 117-2, or subsequent funding pursuant to [section 3(2)] [90-1-603(2)] allocated to the department of commerce for communications have been expended."

90-1-602. *(Temporary)* **Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) (a) "Broadband" means a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet

endpoints. The term includes capabilities that are incidental to and enable the operation of the communications service.

(b) The term does not include dial-up internet access service.

(2) "Broadband equity, access, and deployment program" means the program established by the Infrastructure Investment and Jobs Act, Public Law 117-58, and implemented by the national telecommunications and information administration.

(3) "Broadband service" means the signal transmission facilities and associated network equipment proposed to be deployed in a project area used for the provision of broadband service to residential, business, and government customers.

(4) "Challenge" means a contest to a proposal submitted to the department for funding on the grounds as provided for by the national telecommunications and information administration.

(5) "Commission" means the communications advisory commission established in 90-1-603.

(6) "Community anchor institution" means an entity such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, or community support organization.

(7) "Department" means the department of administration.

(8) "Eligible provider" means an entity that:

(a) has authorization to do business in the state; and

(b) has demonstrated that it has the technical, financial, and managerial resources and experience to provide broadband service or other communications service to customers in the state.

(9) "Extremely high cost per location threshold" is a subsidy cost for each location to be utilized during the proposal selection process in which a proposal may be declined if use of an alternative technology meeting the broadband, equity, access, and deployment program program's technical requirements would be less expensive.

(10) "FCC" means the federal communications commission.

(11) "High-cost area" means an unserved area in which the cost of building out broadband service is fiscally imprudent, and the area contains no less than 80% of unserved broadband-serviceable locations.

(12) "Last mile" means broadband infrastructure that serves as the final leg connecting the broadband service provider's network to the end-user customer's premises.

(13) "Middle mile" means broadband infrastructure that does not connect directly to an end-user location, including a community anchor institution, and includes leased dark fiber, interoffice transport, backhaul, transport connectivity to data centers, special access transport and other similar services, and wired or private wireless broadband infrastructure, including microwave capacity, radio tower access, and other services or infrastructure for wireless broadband network, such as towers, fiber, and microwave links.

(14) "Project" means a proposed deployment of broadband service infrastructure set forth in a proposal for funding authorized under this part.

(15) "Project area" means a shapefile area in an unserved or underserved area where the proposed broadband service infrastructure would be built as described in a proposal for funding authorized under this part.

(16) "Shapefile" means a GIS file format for storing, depicting, and analyzing geospatial data depicting broadband coverage. It is made up of several component files, such as a main file (.shp), an index file (.shx), and a dBASE table (.dbf).

(17) "Underserved area" means a location or area that is not an unserved location and that lacks access to broadband service offered with a speed of not less than 100 megabits per second for downloads, a speed of not less than 20 megabits per second for uploads, and latency less than or equal to 100 milliseconds.

(18) "Underserved service project" means a project in which not less than 80% of broadband-serviceable locations served by the project are unserved areas or underserved areas.

(19) "Unserved area" means a broadband-serviceable location or area that has no access to broadband service or lacks service offered with a speed of not less than 25 megabits per second for downloads, a speed of not less than 3 megabits per second for uploads, and a latency less than or equal to 100 milliseconds.

(20) "Unserved service project" means a project in which not less than 80% of broadband-serviceable locations served by the project are unserved locations. An unserved service project may be as small as a single unserved location. *(Terminates on occurrence of contingency—sec. 9, Ch. 696, L. 2023.)*

History: En. Sec. 2, Ch. 449, L. 2021; amd. Sec. 40(1), Ch. 401, L. 2021; amd. Sec. 1, Ch. 696, L. 2023.

Compiler's Comments

Contingent Termination Revised: Section 9, Ch. 696, L. 2023, amended sec. 13, Ch. 449, L. 2021, by adding a reference to the Infrastructure and Jobs Act of 2021, Public Law 117-58, and substituting "department of administration" for "department of commerce". Effective May 19, 2023.

Contingent Termination: Section 13, Ch. 449, L. 2021, provided: "[Sections 1 through 9] [90-1-601 through 90-1-609] terminate when the budget director certifies to the code commissioner that all funds received from the American Rescue Plan Act of 2021, Public Law 117-2, or subsequent funding pursuant to [section 3(2)] [90-1-603(2)] allocated to the department of commerce for communications have been expended."

90-1-603. *(Temporary)* **Establishment of commission and program— administration and funding.** (1) There is a communications advisory commission that consists of nine members who must be appointed as follows:

(a) three legislators appointed by the president of the senate to include two members of the majority party and one member of the minority party;

(b) three legislators appointed by the speaker of the house to include two members of the majority party and one member of the minority party;

(c) the governor's director of the office of budget and program planning;

(d) the governor's chief economic development officer; and

(e) the governor's director of administration.

(2) The commission may provide parameters governing the submission and funding of broadband deployment grants as allowed by state and federal law or regulation.

(3) The department shall establish the broadband infrastructure deployment program and shall administer and act as the fiscal agent for the program under the direction of the governor's chief economic development officer and with advice from the commission.

(4) The department shall develop parameters in accordance with state and federal law and federal guidance for the deployment of broadband funds with advice from the governor's chief economic development officer and the commission. The department shall make all materials available for public comment at least 14 days in advance of consideration by the commission.

(5) The governor's chief economic development officer, with advice from the commission, shall review materials as required by the national telecommunications and information administration prior to submission for approval, deployment plans, and grant award recommendations made by the department.

(6) The commission may cancel or reject an eligible proposal in whole or in part when it is in the best interests of the state.

(7) The commission shall submit to the governor grant award recommendations for final approval.

(8) Appointed members of the commission must be compensated and receive travel expenses as provided in 2-15-124 for each day in attendance at commission meetings or in the performance of any duty or service as a commission member.

(9) The department of administration shall staff the commission.

(10) Funding for the commission is allocated from the administrative costs allowed in subsection (11).

(11) Funding for the program established under this section is subject to appropriations from general fund revenue, from bonds issued by the department, or federal broadband stimulus funds or other federal funds appropriated by congress and allocated to the department for funding of broadband communications projects. The department may retain up to 2% of federal funding to support program administration as provided for by the national telecommunications and information administration. The department shall report administrative expenditures to the commission on a quarterly basis. *(Terminates on occurrence of contingency—sec. 9, Ch. 696, L. 2023.)*

History: En. Sec. 3, Ch. 449, L. 2021; amd. Sec. 2, Ch. 696, L. 2023.

Compiler's Comments

Contingent Termination Revised: Section 9, Ch. 696, L. 2023, amended sec. 13, Ch. 449, L. 2021, by adding a reference to the Infrastructure and Jobs Act of 2021, Public Law 117-58, and substituting "department of administration" for "department of commerce". Effective May 19, 2023.

Contingent Termination: Section 13, Ch. 449, L. 2021, provided: "[Sections 1 through 9] [90-1-601 through 90-1-609] terminate when the budget director certifies to the code commissioner that all funds received from the American Rescue Plan Act of 2021, Public Law 117-2, or subsequent funding pursuant to [section 3(2)] [90-1-603(2)] allocated to the department of commerce for communications have been expended."

90-1-604. *(Temporary)* **Eligible projects.** (1) An eligible proposal may be awarded funding under this section, consistent with the national telecommunications and information administration, for a project in a project area that, as of the date the proposal is filed, constitutes an unserved or underserved area. Funds must be used in accordance with the requirements set forth in the Infrastructure Investment and Jobs Act, Public Law 117-58, and as established by the national telecommunications and information administration.

(2) The project area, including middle-mile or last-mile proposals, to be served by a project funded under the program must be described on a shapefile basis.

(3) The department may issue requests for proposals or accept proposals from eligible providers or solicit proposals for specific eligible projects as designated by the department, which would be submitted as proposals pursuant to this part.

(4) A broadband project may be recommended to the commission for disqualification on the basis that the location surpasses the extremely high cost per location threshold, high-cost area calculation, or for other valid reasons subject to approval by the national telecommunications and information administration.

(5) If no broadband service technology meeting national telecommunications and information administration's technical requirements is deployable for a subsidy of less than the extremely high cost per location threshold at a given location, the commission is authorized to recommend a proposal involving a less costly technology for that location, even if that technology does not provide reliable broadband service but otherwise satisfies the program's technical requirements.

(6) Middle-mile or last-mile broadband deployment projects may be recommended by the commission if the responsive proposal meets the requirements set forth by the national telecommunications and information administration.

(7) On recommendation by the commission, the department may request proposals from eligible providers for unserved service projects or underserved service projects if no acceptable application is submitted for funding consideration. *(Terminates on occurrence of contingency—sec. 9, Ch. 696, L. 2023.)*

History: En. Sec. 4, Ch. 449, L. 2021; amd. Sec. 3, Ch. 696, L. 2023.

Compiler's Comments

Contingent Termination Revised: Section 9, Ch. 696, L. 2023, amended sec. 13, Ch. 449, L. 2021, by adding a reference to the Infrastructure and Jobs Act of 2021, Public Law 117-58, and substituting "department of administration" for "department of commerce". Effective May 19, 2023.

Contingent Termination: Section 13, Ch. 449, L. 2021, provided: "[Sections 1 through 9] [90-1-601 through 90-1-609] terminate when the budget director certifies to the code commissioner that all funds received from the American Rescue Plan Act of 2021, Public Law 117-2, or subsequent funding pursuant to [section 3(2)] [90-1-603(2)] allocated to the department of commerce for communications have been expended."

90-1-605. *(Temporary)* **Eligible proposals.** (1) Eligible providers who submit responsive proposals:

(a) may not receive funds under any other federal or state government grant or loan program where government funding supports 100% of the proposed project's capital costs;

(b) shall commit to paying not less than the minimum matching amount required by the Infrastructure Investment and Jobs Act, Public Law 117-58, and may not provide a minimum matching amount from any funds derived from government grants or subsidies, except for federal funds designated by the Infrastructure Investment and Jobs Act, Public Law 117-58. Local and tribal governments, in partnership with an eligible provider, may provide funding for broadband infrastructure projects consistent with the provisions of this part and as provided by the national telecommunications and information administration.

(c) may only be a nongovernment entity with demonstrated experience in providing broadband service or other communications services to end-user residential or business customers in the state, unless the government entity or tribe applies in partnership with an eligible broadband service provider; and

(d) shall to the extent required by state or federal law, comply with any affordability requirements.

(2) The department, with approval from the commission, may submit a match waiver to the national telecommunications and information administration if a proposal is within an extremely high cost per location threshold or high-cost area or if the commission considers additional special circumstances exist and that a waiver would serve the public interest and effectuate the purposes of the broadband, equity, access, and deployment program. *(Terminates on occurrence of contingency—sec. 9, Ch. 696, L. 2023.)*

History: En. Sec. 5, Ch. 449, L. 2021; amd. Sec. 4, Ch. 696, L. 2023.

Compiler's Comments

Contingent Termination Revised: Section 9, Ch. 696, L. 2023, amended sec. 13, Ch. 449, L. 2021, by adding a reference to the Infrastructure and Jobs Act of 2021, Public Law 117-58, and substituting "department of administration" for "department of commerce". Effective May 19, 2023.

Contingent Termination: Section 13, Ch. 449, L. 2021, provided: "[Sections 1 through 9] [90-1-601 through 90-1-609] terminate when the budget director certifies to the code commissioner that all funds received from the American Rescue Plan Act of 2021, Public Law 117-2, or subsequent funding pursuant to [section 3(2)] [90-1-603(2)] allocated to the department of commerce for communications have been expended."

90-1-606. *(Temporary)* **Proposals.** (1) The department shall establish a location prioritized timeframe commencing an open process for submission of proposals for funding under the proposal program established in this part. The window for submission must be at least 60 days and not more than 90 days for any shapefile area designation.

(2) (a) An eligible provider shall submit a proposal to the department on a form prescribed by the department. A responsive proposal must include the following information:

(i) evidence demonstrating the provider's technical, financial, and managerial resources and experience to provide broadband service or other communications services to customers in the state and the ability to build, operate, and manage broadband service networks serving business and residential customers in the state;

(ii) a description of the project area, including shapefiles, that the eligible provider proposes to provide broadband service;

(iii) a description of the broadband service infrastructure that is proposed to be deployed, including facilities, equipment, and network capabilities that include minimum speed thresholds;

(iv) evidence, including a certification from the proposal signatory, demonstrating the unserved or underserved nature of the project area to the best of the provider's knowledge;

(v) the number of households, businesses, and public institutions or entities that would have new access to broadband service as a result of the proposal;

(vi) the total cost of the proposed project and the timeframe in which it will be completed;

(vii) the amount of matching funds, including funds from local or tribal governments, or federal funds as allowed by the Infrastructure Investment and Jobs Act, Public Law 117-58, and the national telecommunications and information administration; and

(viii) a preliminary list of all government authorizations, permits, and other approvals required in connection with the proposed deployment, and an estimated timetable for the acquisition of the approvals and the completion of the proposed project.

(b) The department may request additional information as necessary to review the proposed application. Applications that fail to provide the requirements in this section must be submitted to the commission for review. The commission may review the applications and cancel those that do not meet the requirements of this section.

(3) The department shall treat any information that is not publicly available as confidential and subject to the trade secrets protections of state law upon an eligible provider's request for confidential treatment, except that shapefile information depicting broadband coverage in the proposal must be publicly disclosed in sufficient detail to enable a challenging provider to identify the project area proposed to be covered by the provider. *(Terminates on occurrence of contingency—sec. 9, Ch. 696, L. 2023.)*

History: En. Sec. 6, Ch. 449, L. 2021; amd. Sec. 5, Ch. 696, L. 2023.

Compiler's Comments

Contingent Termination Revised: Section 9, Ch. 696, L. 2023, amended sec. 13, Ch. 449, L. 2021, by adding a reference to the Infrastructure and Jobs Act of 2021, Public Law 117-58, and substituting "department of administration" for "department of commerce". Effective May 19, 2023.

Contingent Termination: Section 13, Ch. 449, L. 2021, provided: "[Sections 1 through 9] [90-1-601 through 90-1-609] terminate when the budget director certifies to the code commissioner that all funds received from the American Rescue Plan Act of 2021, Public Law 117-2, or subsequent funding pursuant to [section 3(2)] [90-1-603(2)] allocated to the department of commerce for communications have been expended."

90-1-607. *(Temporary)* **Review of proposal challenges — approval.** (1) Fourteen business days following the closing of the submission window, the department shall make the proposals received available for review in a publicly available electronic file, subject to the confidentiality provisions of 90-1-606(3).

(2) The department shall develop criteria for a challenge process and publish the criteria for public comment at least 14 days prior to the opening of the challenge window. Final responses to challenges must be provided within 30 days of receipt of a challenge for the purpose of expediting awarded projects for modifications accepted through the challenge process.

(3) In reviewing proposals and any accompanying challenge, the department shall conduct its own review of the proposed project areas to ensure that all awarded funds are used to deploy broadband service to unserved or underserved areas. The department may require a provider or challenging provider to submit additional information consistent with this part to enable it to properly assess the proposal or challenge. The department may not award a contract to fund deployment of broadband service for a project area that fails to meet any of the criteria provided in this part for being an unserved or underserved area. The department may require a provider to modify a proposal based on broadband access in the proposed area or other relevant factors.

(4) The department shall award funding support for projects set forth in responsive proposals based on a scoring system, approved by the commission, that must be released to the public at least 30 days prior to the window for submission of proposals. The weighting scheme employed by the department must give the highest weight or priority to the criteria provided by the national telecommunications and information administration and the following:

(a) whether the proposed project area serves unserved or underserved areas, with unserved areas receiving greater weight;

(b) the number of households, businesses, farms, ranches, and community anchor institutions served;

(c) whether the proposed project qualifies as an extremely high cost per location threshold as defined by the department and approved by the national telecommunications and information administration or is a high-cost area as defined by the national telecommunications and information administration;

(d) the length of time the provider has been providing broadband service in the state;

(e) the extent to which government funding support is necessary to deploy broadband service infrastructure in the proposed project area;

(f) the service speed thresholds proposed in the proposal and the scalability of the broadband service proposed to be deployed with higher speed thresholds receiving greater weight;

(g) the provider's ability to leverage its own nearby or adjacent broadband service infrastructure to facilitate the cost-effective deployment of broadband service infrastructure in the proposed project area;

(h) the estimated time in which the provider proposes to complete the proposed project;

(i) any other factors the department, as recommended by the commission, determines to be reasonable and appropriate, consistent with the Infrastructure Investment and Jobs Act, Public Law 117-58, and the national telecommunications and information administration; and

(j) broadband service providers who have broadband service infrastructure already deployed in the project area.

(5) High-cost areas must be considered for services to the extent terrestrial service is economically viable.

(6) The department shall set a reasonable timeframe to complete projects selected for funding approval. The department may, in consultation with the provider, set reasonable milestones regarding this completion. The department shall create procedures including penalties associated with any failure to comply with the provisions of the awarded contract without reasonable cause. *(Terminates on occurrence of contingency—sec. 9, Ch. 696, L. 2023.)*

History: En. Sec. 7, Ch. 449, L. 2021; amd. Sec. 40(2), Ch. 401, L. 2021; amd. Sec. 6, Ch. 696, L. 2023.

Compiler's Comments

Contingent Termination Revised: Section 9, Ch. 696, L. 2023, amended sec. 13, Ch. 449, L. 2021, by adding a reference to the Infrastructure and Jobs Act of 2021, Public Law 117-58, and substituting "department of administration" for "department of commerce". Effective May 19, 2023.

Contingent Termination: Section 13, Ch. 449, L. 2021, provided: "[Sections 1 through 9] [90-1-601 through 90-1-609] terminate when the budget director certifies to the code commissioner that all funds received from the American Rescue Plan Act of 2021, Public Law 117-2, or subsequent funding pursuant to [section 3(2)] [90-1-603(2)] allocated to the department of commerce for communications have been expended."

90-1-608. *(Temporary)* **Implementation.** (1) Consistent with the provisions of this part, the department shall define criteria and implementation processes to ensure that project funds are used as intended.

(2) This section may not be construed to preclude the department from considering a provider's financial ability to complete the project proposed in a proposal or making reasonable requests for information necessary for the oversight and administration of projects funded under this section.

(3) The department may adopt rules, in consultation with the commission, as necessary to carry out this part. This section may not be construed to empower the department to adopt any additional regulatory obligations or to impose any new or additional regulatory requirements on funding recipients, through proposal agreements or any other mechanism, other than the program implementation procedures expressly authorized in this part or as required by federal laws providing funding to be distributed pursuant to this statute. *(Terminates on occurrence of contingency—sec. 9, Ch. 696, L. 2023.)*

History: En. Sec. 8, Ch. 449, L. 2021; amd. Sec. 7, Ch. 696, L. 2023.

Compiler's Comments

Contingent Termination Revised: Section 9, Ch. 696, L. 2023, amended sec. 13, Ch. 449, L. 2021, by adding a reference to the Infrastructure and Jobs Act of 2021, Public Law 117-58, and substituting "department of administration" for "department of commerce". Effective May 19, 2023.

Contingent Termination: Section 13, Ch. 449, L. 2021, provided: "[Sections 1 through 9] [90-1-601 through 90-1-609] terminate when the budget director certifies to the code commissioner that all funds received from the American Rescue Plan Act of 2021, Public Law 117-2, or subsequent funding pursuant to [section 3(2)] [90-1-603(2)] allocated to the department of commerce for communications have been expended."

90-1-609. *(Temporary)* **Montana broadband infrastructure accounts.** (1) (a) There is a federal special Montana broadband infrastructure account.

(b) All money in the account is allocated to the department of administration to be used solely for the purposes of this part. Interest earned on funds in the account must be deposited in the account.

(c) The governor may accept and shall deposit into the account federal broadband stimulus funds or other federal funds or other federal funds appropriated by congress and allocated to the department of administration for funding of broadband communications projects.

(d) Notwithstanding any other provision of law, funds allocated under this section may not be transferred or expended for any purpose other than to provide funding for projects authorized pursuant to this part.

(2) (a) There is a state special Montana broadband infrastructure account.

(b) All money in the account is allocated to the department of administration to be used solely for the purposes of this part. Interest earned on funds in the account must be deposited in the account.

(c) The governor may accept and shall deposit to the account any penalties allocated to the department of administration for funding of broadband communications projects.

(d) Notwithstanding any other provision of law, funds allocated under this section may not be transferred or expended for any purpose other than to provide funding for projects authorized pursuant to this part. *(Terminates on occurrence of contingency—sec. 9, Ch. 696, L. 2023.)*

History: En. Sec. 9, Ch. 449, L. 2021; amd. Sec. 8, Ch. 696, L. 2023.

Compiler's Comments

Contingent Termination Revised: Section 9, Ch. 696, L. 2023, amended sec. 13, Ch. 449, L. 2021, by adding a reference to the Infrastructure and Jobs Act of 2021, Public Law 117-58, and substituting "department of administration" for "department of commerce". Effective May 19, 2023.

Contingent Termination: Section 13, Ch. 449, L. 2021, provided: "[Sections 1 through 9] [90-1-601 through 90-1-609] terminate when the budget director certifies to the code commissioner that all funds received from the American Rescue Plan Act of 2021, Public Law 117-2, or subsequent funding pursuant to [section 3(2)] [90-1-603(2)] allocated to the department of commerce for communications have been expended."

CHAPTER 2
RESOURCE DEVELOPMENT AND RECLAMATION

Part 1 — Renewable Resource Development Loans, Grants, and Bonds (Repealed)

Part 2 — Investigation Programs

90-2-201. Hydrocarbon and geology investigation program — purpose — grants.
90-2-202. Coal ash markets investigation program.

Parts 3 through 10 reserved

Part 11 — Reclamation and Development Grants Program

90-2-1101. Short title.
90-2-1102. Policy and purpose.
90-2-1103. Definitions.
90-2-1104. Repealed.
90-2-1105. Adoption of rules.
90-2-1106 through 90-2-1110 reserved.
90-2-1111. State and local grants.
90-2-1112. Eligibility requirements.
90-2-1113. Evaluation criteria — priority.
90-2-1114. Conditions of grants.
90-2-1115 through 90-2-1120 reserved.
90-2-1121. Prohibited compensation to public officers or employees — penalty.
90-2-1122. Exemption from environmental review.

Chapter Cross-References

Classification and alternative management of county lands, Title 7, ch. 8, part 25.
County forests, Title 7, ch. 8, part 26.
County land advisory boards, Title 7, ch. 8, part 27.
Coal tax to alternative energy research and renewable resource development, 15-35-108.
Development of outdoor recreational resources, Title 23, ch. 2, part 1.
Montana development corporation, Title 32, ch. 4.
Forest development road, 61-8-110.
Mortgages, Title 71, ch. 1.
Montana Environmental Policy Act, Title 75, ch. 1.
Environmental contingency grant program, Title 75, ch. 1, part 11.
Clean Air Act of Montana, Title 75, ch. 2.
Financial provisions — water quality, Title 75, ch. 5, part 5.
Flood plain delineation, 76-5-201.
Department of Environmental Quality research and information — water pollution, 75-5-212.
Comprehensive planning — open-space land, Title 76, ch. 6.
Montana Natural Areas Act of 1974, Title 76, ch. 12, part 1.
Development, protection, and conservation of forest, range, and water resources, 76-13-104.
Soil conservation — operation of conservation districts, Title 76, ch. 15, part 4.
Cooperative state grazing districts — development of grazing potential, 76-16-305, 76-16-306.
Development of state land resources, Title 77, ch. 1, part 6.
State water plan, 85-1-203.
Renewable resource grant and loan program, Title 85, ch. 1, part 6.
Water leasing program, 85-2-141.
Weather modification activities, Title 85, ch. 3.
Conservancy districts, Title 85, ch. 9.
Wildlife research, 87-1-210.
Fish and Wildlife Commission, Title 87, ch. 1, part 3.

Part 1
Renewable Resource Development Loans, Grants, and Bonds (Repealed)

90-2-101. Repealed. Sec. 35, Ch. 478, L. 1993.

History: En. 89-3601 by Sec. 1, Ch. 533, L 1975; R.C.M. 1945; 89-3601; amd. Sec. 47, Ch. 505, L. 1981.

90-2-102. Repealed. Sec. 35, Ch. 478, L. 1993.

History: En. 89-3602 by Sec. 2, Ch. 533, L. 1975; amd. Sec. 1, Ch. 323, L. 1977; R.C.M. 1947, 89-3602(part); amd. Sec. 46, Ch. 298, L. 1983.

90-2-103. Repealed. Sec. 35, Ch. 478, L. 1993.

History: En. 89-3602 by Sec. 2, Ch. 533, L. 1975; amd. Sec. 1, Ch. 323, L. 1977; R.C.M. 1947, 89-3602(part); amd. Sec. 1, Ch. 413, L. 1981.

90-2-104. Repealed. Sec. 35, Ch. 478, L. 1993.

History: En. 89-3603 by Sec. 3, Ch. 533, L. 1975; R.C.M. 1947, 89-3603(2).

90-2-105. Repealed. Sec. 5, Ch. 51, L. 1979.

History: En. 89-3603 by Sec. 3, Ch. 533, L. 1975; R.C.M. 1947, 89-3603(3).

90-2-106. Repealed. Sec. 5, Ch. 51, L. 1979.

History: En. 89-3603 by Sec. 3, Ch. 533, L. 1975; R.C.M. 1947, 89-3603(1).

90-2-107. Repealed. Sec. 35, Ch. 478, L. 1993.

History: En. 89-3605 by Sec. 5, Ch. 533, L. 1975; amd. Sec. 3, Ch. 323, L. 1977; R.C.M. 1947, 89-3605; amd. Sec. 16, Ch. 717, L. 1985.

90-2-108. Repealed. Sec. 35, Ch. 478, L. 1993.

History: En. 89-3603 by Sec. 3, Ch. 533, L. 1975; R.C.M. 1947, 89-3603(4) thru (6), (8); amd. Sec. 3, Ch. 583, L. 1991.

90-2-109. Repealed. Sec. 35, Ch. 478, L. 1993.

History: En. 89-3603 by Sec. 3, Ch. 533, L. 1975; R.C.M. 1947, 89-3603(7).

90-2-110. Repealed. Sec. 35, Ch. 478, L. 1993.

History: En. 89-3603 by Sec. 3, Ch. 533, L. 1975; R.C.M. 1947, 89-3603(10).

90-2-111. Repealed. Sec. 35, Ch. 478, L. 1993.

History: En. 89-3604 by Sec. 4, Ch. 533, L. 1975; amd. Sec. 2, Ch. 323, L. 1977; R.C.M. 1947, 89-3604(part); amd. Sec. 48, Ch. 505, L. 1981; amd. Sec. 15, Ch. 418, L. 1987; amd. Sec. 11, Ch. 659, L. 1991; amd. Sec. 1, Ch. 780, L. 1991.

90-2-112. Repealed. Sec. 35, Ch. 478, L. 1993.

History: En. 89-3604 by Sec. 4, Ch. 533, L. 1975; amd. Sec. 2, Ch. 323, L. 1977; R.C.M. 1947, 89-3604(part); amd. Sec. 2, Ch. 51, L. 1979; amd. Sec. 47, Ch. 298, L. 1983.

90-2-113. Repealed. Sec. 16, Ch. 418, L. 1987.

History: En. Sec. 2, Ch. 413, L. 1981; amd. Sec. 8, Ch. 171, L. 1983.

90-2-114 through 90-2-120 reserved.

90-2-121. Repealed. Sec. 35, Ch. 478, L. 1993.

History: En. 89-3606 by Sec. 6, Ch. 533, L. 1975; amd. Sec. 4, Ch. 323, L. 1977; R.C.M. 1947, 89-3606(1) thru (5); amd. Sec. 48, Ch. 298, L. 1983; amd. Sec. 16, Ch. 512, L. 1985.

90-2-122. Repealed. Sec. 35, Ch. 478, L. 1993.

History: En. 89-3606 by Sec. 6, Ch. 533, L. 1975; amd. Sec. 4, Ch. 323, L. 1977; R.C.M. 1947, 89-3606(6) thru (8); amd. Sec. 49, Ch. 298, L. 1983.

90-2-123. Repealed. Sec. 35, Ch. 478, L. 1993.

History: En. 89-3607 by Sec. 7, Ch. 533, L. 1975; amd. Sec. 8, Ch. 540, L. 1977; R.C.M. 1947, 89-3607(1) thru (3); amd. Sec. 50, Ch. 298, L. 1983; amd. Sec. 17, Ch. 512, L. 1985.

90-2-124. Repealed. Sec. 35, Ch. 478, L. 1993.

History: En. 89-3607 by Sec. 7, Ch. 533, L. 1975; amd. Sec. 8, Ch. 540, L. 1977; R.C.M. 1947, 89-3607(4); amd. Sec. 49, Ch. 505, L. 1981; amd. Sec. 51, Ch. 298, L. 1983; amd. Sec. 3, Ch. 2, L. 1987; amd. Sec. 4, Ch. 662, L. 1987.

90-2-125. Repealed. Sec. 35, Ch. 478, L. 1993.

History: En. 89-3608 by Sec. 8, Ch. 533, L. 1975; amd. Sec. 5, Ch. 323, L. 1977; R.C.M. 1947, 89-3608(1); amd. Sec. 52, Ch. 298, L. 1983; amd. Sec. 18, Ch. 512, L. 1985.

90-2-126. Repealed. Sec. 35, Ch. 478, L. 1993.

History: En. 89-3608 by Sec. 8, Ch. 533, L. 1975; amd. Sec. 5, Ch. 323, L. 1977; R.C.M. 1947, 89-3608(3), (4); amd. Sec. 53, Ch. 298, L. 1983.

90-2-127. Repealed. Sec. 35, Ch. 478, L. 1993.

History: En. 89-3609 by Sec. 9, Ch. 533, L. 1975; R.C.M. 1947, 89-3609; amd. Sec. 54, Ch. 298, L. 1983.

90-2-128. Repealed. Sec. 35, Ch. 478, L. 1993.

History: En. 89-3603 by Sec. 3, Ch. 533, L. 1975; R.C.M. 1947, 89-3603(9).

90-2-129 through 90-2-139 reserved.

90-2-140. Repealed. Sec. 14, Ch. 405, L. 2003.

History: En. Sec. 6, HB 621, L. 1987; amd. Sec. 489, Ch. 418, L. 1995.

90-2-141. Repealed. Sec. 14, Ch. 405, L. 2003.

History: En. Sec. 7, HB 621, L. 1987; amd. Sec. 490, Ch. 418, L. 1995.

Part 2
Investigation Programs

90-2-201. Hydrocarbon and geology investigation program — purpose — grants. (1) The bureau of mines and geology shall establish a hydrocarbon and geology investigation program to determine the existence of oil and gas deposits in the state. The purposes of the program are to determine if new methods of oil and gas production will improve production in existing oil and gas fields and to locate new fields containing oil and gas resources.

(2) In prioritizing areas to investigate, the bureau of mines and geology shall first consider counties where there exists historical evidence of oil and gas production, including the counties of Blaine, Carter, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Glacier, Hill, Liberty, McCone, Musselshell, Petroleum, Phillips, Pondera, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Teton, Toole, Treasure, Valley, and Yellowstone.

(3) The bureau of mines and geology may start an investigation when it has sufficient funds to conduct an investigation or in other circumstances the bureau determines appropriate.

(4) (a) Within 1 year of starting an investigation, the bureau of mines and geology shall present the results of the investigation in the form of maps and text to:

(i) the counties included in the investigation;

(ii) the economic affairs interim committee; and

(iii) the environmental quality council.

(b) After the establishment of the program, the bureau of mines and geology shall report to the legislature in accordance with 5-11-210.

(5) (a) To fulfill the requirements of subsections (1) and (2), the bureau of mines and geology may provide grants to faculty or students of any institution of higher education in the state in the areas of geology, geohydrology, civil engineering, chemical engineering, mechanical engineering, mining engineering, and petroleum engineering.

(b) The bureau of mines and geology shall provide notice of available grants to all institutions of higher education in the state and post notice on its website.

(c) Grant recipients pursuant to this subsection (5) shall report progress to the bureau of mines and geology at least twice a year in a manner determined by the bureau.

(6) The bureau of mines and geology may accept appropriations, gifts, grants, and reimbursements to be used for the purposes of this section.

History: En. Sec. 1, Ch. 553, L. 2021.

90-2-202. Coal ash markets investigation program. (1) The department of commerce shall establish a coal ash markets investigation program to determine the existence of economically viable markets to reuse coal ash.

(2) The department may start an investigation when it has sufficient funds to conduct an investigation or in other circumstances the department determines appropriate. The department may issue grants to qualified individuals or entities to conduct the investigation.

(3) (a) Within 1 year of starting an investigation, the department shall present the results of the investigation in the form of maps and text to:

(i) the economic interim affairs committee; and

(ii) the environmental quality council.

(b) After the establishment of the program, the department shall report to the legislature in accordance with 5-11-210.

(4) The department may accept appropriations, gifts, grants, and reimbursements to be used for the purposes of this section.

History: En. Sec. 2, Ch. 553, L. 2021.

Parts 3 through 10 reserved

Part 11
Reclamation and Development Grants Program

90-2-1101. Short title. This part may be cited as the "Reclamation and Development Grants Program Act".

History: En. Sec. 1, Ch. 418, L. 1987.

90-2-1102. Policy and purpose. (1) The policy of the state of Montana expressed in the Reclamation and Development Grants Program Act is to provide a state capability to fund projects that indemnify the people of the state for the effects of mineral development on public resources and that meet other crucial needs serving the public interest and the total environment of the citizens of Montana.

(2) The purposes of the reclamation and development grants program are to:

(a) repair, reclaim, and mitigate environmental damage to public resources from nonrenewable resource extraction; and

(b) develop and ensure the quality of public resources for the benefit of all Montanans.

History: En. Sec. 2, Ch. 418, L. 1987.

90-2-1103. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(2) "Financially feasible" means that adequate funds are available to complete the project as approved.

(3) "Mineral" means any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium, or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana.

(4) "Mineral development" means exploration, extraction, processing, or other activity related to the production of a mineral.

(5) "Mitigation" means the act of rectifying an impact by repairing, rehabilitating, or restoring the affected environment; reducing or eliminating an impact over time by operations that preserve or maintain the environment; or compensating for an impact by replacing or providing substitute resources or habitats.

(6) "Project" means a planned and coordinated action or series of actions addressing an objective consistent with the policy and purpose of the reclamation and development grants program. A project may consist of problem analysis, feasibility or design studies, environmental monitoring, remedial action plans or implementation, technology demonstration, research, construction or acquisition of capital facilities, or other related actions.

(7) "Public benefits" means those benefits that accrue to citizens as a group and enhance the common well-being of the people of Montana.

(8) "Public resources" means the natural resources of the state, including air, water, soil, minerals, vegetation, and fish and wildlife, and the economic, social, and cultural conditions of Montana citizens.

(9) "Technically feasible" means that a project or activity can be designed, constructed, operated, or carried out to accomplish its objectives, utilizing accepted engineering and other technical principles and concepts.

History: En. Sec. 3, Ch. 418, L. 1987; amd. Sec. 32, Ch. 478, L. 1993; amd. Sec. 24, Ch. 432, L. 2007.

90-2-1104. Repealed. Sec. 30, Ch. 432, L. 2007.

History: En. Sec. 4, Ch. 418, L. 1987; amd. Sec. 33, Ch. 478, L. 1993; amd. Sec. 4, Ch. 577, L. 1995; amd. Sec. 308, Ch. 42, L. 1997; amd. Sec. 7, Ch. 444, L. 1997; amd. Sec. 11, Ch. 144, L. 1999; amd. Sec. 15, Ch. 522, L. 2003; amd. Sec. 7, Ch. 308, L. 2005.

90-2-1105. Adoption of rules. The department may adopt rules to:

(1) prescribe the form and content of applications for grants;

(2) describe the terms and conditions of making grants;

(3) prescribe a monitoring program to evaluate the effectiveness of funded projects; and

(4) develop any other procedures necessary to accomplish the objectives of the reclamation and development grants program.

History: En. Sec. 9, Ch. 418, L. 1987; amd. Sec. 34, Ch. 478, L. 1993.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

90-2-1106 through 90-2-1110 reserved.

90-2-1111. State and local grants. (1) A department, agency, board, commission, or other division of state government or any city, county, or other political subdivision or tribal government within the state may apply, in accordance with the procedures established by the department, for a grant from the natural resources projects state special revenue account established in 15-38-302 for a project that is consistent with the policy and purpose of the reclamation and development grants program.

(2) The department shall evaluate applications under the eligibility criteria provided in 90-2-1112 and the evaluation criteria provided in 90-2-1113.

(3) The department shall solicit and consider in its evaluation of applications the views of interested persons and public agencies.

(4) Based on its evaluation of eligible applications, the department shall recommend to the governor projects to receive grants from the natural resources projects state special revenue account established in 15-38-302.

(5) The governor shall submit all proposals, with the governor's recommended priorities, to the legislature by the first day of any regular legislative session. The legislature may approve by appropriation or other appropriate means grants for those projects it finds consistent with the policies and purposes of the reclamation and development grants program. The department shall administer and oversee the grants to approved projects and monitor the projects.

History: En. Sec. 5, Ch. 418, L. 1987; amd. Sec. 25, Ch. 432, L. 2007; amd. Sec. 2867, Ch. 56, L. 2009.

90-2-1112. Eligibility requirements. (1) Except as provided under subsection (2), to be eligible for funding under the reclamation and development grants program, the proposed project must provide benefits in one or more of the following categories:

(a) reclamation of land, water, or other resources adversely affected by mineral development;

(b) mitigation of damage to public resources caused by mineral development;

(c) research, demonstration, or technical assistance to promote the wise use of Montana minerals, including efforts to make processing more environmentally compatible;

(d) investigation and remediation of sites where hazardous wastes or regulated substances threaten public health or the environment; and

(e) research to assess existing or potential environmental damage resulting from mineral development.

(2) If there is a crucial state need to protect Montana's environment, the department may evaluate and the governor may recommend that the legislature approve funding for projects in addition to those described in subsection (1).

(3) To be eligible for funding under the reclamation and development grants program, a project must:

(a) be technically and financially feasible;

(b) be the best cost-effective alternative to address a problem or attain an objective;

(c) comply with statutory and regulatory standards protecting environmental quality; and

(d) be from an applicant able and willing to enter into a contract with the department for the implementation of the proposed project or activity.

(4) A project is not eligible for funding under the reclamation and development grants program to the extent that the project is eligible for and can reasonably be expected to receive funding from other state or federal reclamation programs or any other program or act that provides funding to accomplish remedial action for environmental damage or if the project is permitted under Title 82, chapter 4 or 11.

(5) A proposed project is not eligible for funding under the reclamation and development grants program if there is a liable party who would be relieved of financial or legal responsibility and who can reasonably be expected to be held responsible.

History: En. Sec. 6, Ch. 418, L. 1987; amd. Sec. 10, Ch. 552, L. 1999.

Cross-References

Strip and underground mine siting, Title 82, ch. 4, part 1.

Coal and uranium mine reclamation, Title 82, ch. 4, part 2.

90-2-1113. Evaluation criteria — priority. (1) Except as provided in subsection (2), the department shall consider the following criteria in evaluating eligible applications and in selecting projects to be recommended to the governor for funding:

(a) the degree to which the project will provide benefits in its eligibility category or categories;

(b) the degree to which the project will provide public benefits;

(c) the degree to which the project will promote, enhance, or advance the policies and purposes of the reclamation and development grants program;

(d) the degree to which the project will provide for the conservation of natural resources;

(e) the degree of need and urgency for the project;

(f) the extent to which the project sponsor or local entity is contributing to the costs of the project or is generating additional nonstate funds;

(g) the degree to which jobs are created for persons who need job training, receive public assistance, or are chronically unemployed; and

(h) any other criteria that the department considers necessary to carry out the policies and purposes of the reclamation and development grants program.

(2) Subject to the conditions of this part, the department shall give priority to grant requests not to exceed a total of $800,000 for the biennium for abandoned mine reclamation projects. A grant may not be used for personnel costs or general operating expenses.

History: En. Sec. 7, Ch. 418, L. 1987; amd. Sec. 1, Ch. 430, L. 1993; amd. Sec. 1, Ch. 59, L. 1999; amd. Sec. 11, Ch. 552, L. 1999; amd. Sec. 1, Ch. 239, L. 2003; amd. Sec. 5, Ch. 168, L. 2013; amd. Sec. 3, Ch. 413, L. 2015.

90-2-1114. Conditions of grants. Disbursement of grant funds under this part is subject to the following conditions which must be met by project sponsors:

(1) A scope of work and budget for the project must be approved by the department. Reduction in the scope of work or budget may not affect priority activities or improvements.

(2) Other funds required for project completion must have been committed and the commitment must be documented.

(3) An agreement between the department and the grant applicant must be executed in a timely manner, taking into consideration any changed conditions or circumstances that govern the administration and disbursement of funds.

(4) Any other specific requirements must be accomplished as considered necessary by the department to accomplish the purpose of the grant as evidenced from the application to the department or the proposal to the legislature.

(5) State funding for a project under this part is not intended to relieve a liable party from financial or legal responsibility.

History: En. Sec. 8, Ch. 418, L. 1987.

90-2-1115 through 90-2-1120 reserved.

90-2-1121. Prohibited compensation to public officers or employees — penalty. (1) An officer, attorney, or other employee of the department may not directly or indirectly be the beneficiary of or receive any fee, commission, gift, or other consideration in connection with any transaction or business under the reclamation and development grants program other than the salary, fee, or other compensation received as an officer, attorney, or employee.

(2) A person convicted of violating any provision of this section shall be punished by a fine not to exceed $2,000 plus the value of any consideration illegally received or by imprisonment for a term not to exceed 2 years, or both. Any fines collected under this section must be deposited in the natural resources projects state special revenue account established in 15-38-302.

History: En. Sec. 10, Ch. 418, L. 1987; amd. Sec. 309, Ch. 42, L. 1997; amd. Sec. 26, Ch. 432, L. 2007.

Cross-References

Public employees and officers — standards of conduct, Title 2, ch. 2.
Definition of felony and misdemeanor, 45-2-101.
General requirements of criminal act and mental state, 45-2-103.
Absolute liability, 45-2-104.
Official misconduct, 45-7-401.

90-2-1122. Exemption from environmental review. The department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing grants, loans, or bonds related to conservation, reclamation, and renewable resource activities pursuant to this part.

History: En. Sec. 4, Ch. 116, L. 2023.

CHAPTER 3
RESEARCH AND COMMERCIALIZATION

Part 1 — General Provisions (Repealed)
Part 2 — Science and Technology Development Board (Repealed)
Part 3 — Investments — Appropriations (Repealed)
Part 4 — Science and Technology Development Seed Capital Fund Bonds (Repealed)
Part 5 — Science and Technology Development Project Loan Program (Repealed)
Parts 6 through 8 reserved
Part 9 — Medical Research Facility Projects (Repealed)
Part 10 — Research and Commercialization Projects (Repealed)
Parts 11 and 12 reserved
Part 13 — Geothermal Research
90-3-1301. Geothermal research.
90-3-1302. Authority to accept gifts, grants, contributions, and reimbursements.

Part 1
General Provisions
(Repealed)

90-3-101. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.

History: (3)(a)En. Sec. 1, Ch. 701, L. 1985; amd. Sec. 81, Ch. 83, L. 1989; amd. Sec. 6, Ch. 626, L. 1989; (1) En. Sec. 1, Ch. 316, L. 1989; (2), (3)(b) thru (3)(d)En. Sec. 2, Ch. 316, L. 1989; amd. Sec. 12, Ch. 589, L. 1991; amd. Secs. 5, 12, Ch. 594, L. 1991.

90-3-102. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.

History: En. Sec. 2, Ch. 701, L. 1985; amd. Sec. 17, Ch. 316, L. 1989; amd. Sec. 1, Ch. 566, L. 1991; amd. Sec. 6, Ch. 594, L. 1991; amd. Sec. 3, Ch. 331, L. 1993.

90-3-103. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 11, Ch. 701, L. 1985.

Part 2
Science and Technology Development Board
(Repealed)

90-3-201. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.

History: En. Sec. 5, Ch. 701, L. 1985.

90-3-202. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.

History: En. Sec. 4, Ch. 701, L. 1985.

90-3-203. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.

History: En. Sec. 6, Ch. 701, L. 1985; amd. Sec. 22, Ch. 461, L. 1987; amd. Sec. 18, Ch. 316, L. 1989; amd. Sec. 62, Ch. 112, L. 1991; amd. Sec. 52, Ch. 349, L. 1993.

90-3-204. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.

History: En. Sec. 3, Ch. 316, L. 1989.

Part 3
Investments — Appropriations
(Repealed)

90-3-301. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.

History: En. Sec. 8, Ch. 701, L. 1985; amd. Sec. 19, Ch. 316, L. 1989; amd. Sec. 7, Ch. 594, L. 1991; amd. Sec. 63, Ch. 422, L. 1997.

90-3-302. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 9, Ch. 701, L. 1985; amd. Sec. 23, Ch. 461, L. 1987.

90-3-303. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.

History: En. Sec. 7, Ch. 701, L. 1985.

90-3-304. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.

History: En. Sec. 10, Ch. 701, L. 1985; amd. Sec. 24, Ch. 461, L. 1987; amd. Sec. 20, Ch. 316, L. 1989.

90-3-305. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.

History: En. Sec. 15, Ch. 316, L. 1989; amd. Secs. 8, 12, Ch. 594, L. 1991; amd. Sec. 1, Ch. 9, Sp. L. January 1992; amd. Sec. 4, Ch. 331, L. 1993.

Part 4
Science and Technology Development Seed Capital Fund Bonds
(Repealed)

90-3-401. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 1, Ch. 461, L. 1987.

90-3-402. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 2, Ch. 461, L. 1987.

90-3-403. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 3, Ch. 461, L. 1987.

90-3-404. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 4, Ch. 461, L. 1987.

90-3-405. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 5, Ch. 461, L. 1987.

90-3-406. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 6, Ch. 461, L. 1987.

90-3-407. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 7, Ch. 461, L. 1987.

90-3-408. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 8, Ch. 461, L. 1987.

90-3-409. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 9, Ch. 461, L. 1987.

90-3-410. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 10, Ch. 461, L. 1987.

90-3-411. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 11, Ch. 461, L. 1987.

90-3-412. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 12, Ch. 461, L. 1987.

90-3-413. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 13, Ch. 461, L. 1987.

90-3-414. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 14, Ch. 461, L. 1987.

90-3-415. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 15, Ch. 461, L. 1987.

90-3-416. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 16, Ch. 461, L. 1987.

90-3-417. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 17, Ch. 461, L. 1987.

90-3-418. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 18, Ch. 461, L. 1987.

90-3-419. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 19, Ch. 461, L. 1987.

90-3-420. Repealed. Sec. 24, Ch. 316, L. 1989.
History: **En. Sec. 20, Ch. 461, L. 1987.**

Part 5
Science and Technology Development Project Loan Program
(Repealed)

90-3-501. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.
History: **En. Sec. 4, Ch. 316, L. 1989; amd. Sec. 2, Ch. 566, L. 1991.**

90-3-502. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.
History: **En. Sec. 5, Ch. 316, L. 1989.**

90-3-503. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.
History: **En. Sec. 6, Ch. 316, L. 1989.**

90-3-504. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.
History: **En. Sec. 7, Ch. 316, L. 1989.**

90-3-505. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.
History: **En. Sec. 8, Ch. 316, L. 1989; amd. Sec. 5, Ch. 331, L. 1993.**

90-3-506. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.
History: **En. Sec. 9, Ch. 316, L. 1989.**

90-3-507 through 90-3-518 reserved.

90-3-519. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.
History: **En. Sec. 5, Ch. 566, L. 1991.**

90-3-520. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.
History: **En. Sec. 6, Ch. 566, L. 1991.**

90-3-521. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.
History: **En. Sec. 10, Ch. 316, L. 1989.**

90-3-522. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.
History: **En. Sec. 11, Ch. 316, L. 1989; amd. Sec. 3, Ch. 566, L. 1991.**

90-3-523. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.
History: **En. Sec. 12, Ch. 316, L. 1989; amd. Sec. 4, Ch. 566, L. 1991; amd. Sec. 6, Ch. 331, L. 1993.**

90-3-524. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.
History: **En. Sec. 13, Ch. 316, L. 1989; amd. Secs. 9, 12, Ch. 594, L. 1991; amd. Sec. 7, Ch. 331, L. 1993.**

90-3-525. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.
History: **En. Sec. 14, Ch. 316, L. 1989; amd. Sec. 13, Ch. 589, L. 1991; amd. Secs. 10, 12, Ch. 594, L. 1991; amd. Sec. 2, Ch. 9, Sp. L. January 1992; amd. Sec. 8, Ch. 331, L. 1993.**

Parts 6 through 8 reserved

Part 9
Medical Research Facility Projects
(Repealed)

90-3-901. Repealed. Secs. 13, 16(1), Ch. 549, L. 1997.
History: **En. Sec. 2, Ch. 634, L. 1989; amd. Sec. 1, Ch. 429, L. 1991.**

Part 10
Research and Commercialization Projects
(Repealed)

90-3-1001. Repealed. Sec. 16, Ch. 343, L. 2019.
History: **En. Sec. 1, Ch. 563, L. 1999; amd. Sec. 34, Ch. 34, L. 2001; amd. Sec. 216, Ch. 483, L. 2001; amd. Sec. 1, Ch. 539, L. 2003; amd. Sec. 27, Ch. 123, L. 2013.**

90-3-1002. Repealed. Sec. 16, Ch. 343, L. 2019.

History: En. Sec. 2, Ch. 563, L. 1999; amd. Sec. 35, Ch. 34, L. 2001; amd. Sec. 1, Ch. 431, L. 2001; amd. Sec. 2, Ch. 539, L. 2003; amd. Sec. 1, Ch. 438, L. 2007; amd. Sec. 1, Ch. 176, L. 2015.

90-3-1003. Repealed. Sec. 16, Ch. 343, L. 2019.

History: En. Sec. 3, Ch. 563, L. 1999; amd. Secs. 36, 38, Ch. 34, L. 2001; amd. Sec. 2, Ch. 431, L. 2001; amd. Sec. 3, Ch. 539, L. 2003; amd. Sec. 2, Ch. 438, L. 2007; amd. Sec. 2, Ch. 30, L. 2009; amd. Sec. 2, Ch. 118, L. 2009; amd. Sec. 3, Ch. 232, L. 2009; amd. Sec. 2, Ch. 337, L. 2011; amd. Sec. 2, Ch. 176, L. 2015.

90-3-1004. Repealed. Sec. 84, Ch. 7, L. 2001.

History: En. Sec. 17, Ch. 563, L. 1999.

90-3-1005. Repealed. Sec. 16, Ch. 343, L. 2019.

History: En. Sec. 19, Ch. 563, L. 1999.

90-3-1006. Repealed. Sec. 16, Ch. 343, L. 2019.

History: En. Sec. 20, Ch. 563, L. 1999.

Parts 11 and 12 reserved

Part 13
Geothermal Research

90-3-1301. Geothermal research. (1) Subject to subsection (2), the Montana bureau of mines and geology may conduct geothermal research that:

(a) characterizes the geothermal resource base in Montana;

(b) tests high-temperature and high-pressure drilling technologies benefiting geothermal well construction; and

(c) determines reservoir characterization, monitoring, and modeling necessary for commercial application in Montana.

(2) If the research is conducted on private property, the bureau must have written agreements with:

(a) the surface property owner and any owners of the geothermal resource for access and use of the site for research purposes; and

(b) subject to subsections (3) and (4), the utility, as defined in 69-5-102, with a service area nearest the research site if the utility intends to commercially develop the site.

(3) If the utility with a service area nearest the research site intends to develop the site for future commercial use, the utility shall:

(a) contribute, at a minimum, 25% of the research costs as determined by the bureau for research at the site; and

(b) have an agreement in place with the surface property owner and any owners of the geothermal resource where the research site is located for future development of the geothermal resource.

(4) If the utility with a service area nearest the research site does not intend to develop the site for commercial use, the utility with a service area next nearest the site may enter into a written agreement pursuant to subsection (2)(b). If a utility does not intend to develop the site for future commercial use, the agreement pursuant to subsection (2)(b) is not required.

(5) In determining the utility with a service area nearest the site, all measurements must be made on the shortest vector that can be drawn from the line nearest the service area to the nearest portion of the geothermal site.

(6) The bureau shall provide a report to the energy and technology interim committee in accordance with 5-11-210 on research conducted pursuant to this section and funding received pursuant to 90-3-1302.

History: En. Sec. 1, Ch. 383, L. 2009; amd. Sec. 46, Ch. 19, L. 2011; amd. Sec. 134, Ch. 261, L. 2021; amd. Sec. 13, Ch. 625, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 13, Ch. 625, L. 2025. Amendment effective May 13, 2025.

90-3-1302. Authority to accept gifts, grants, contributions, and reimbursements. The Montana bureau of mines and geology may accept gifts, grants, contributions pursuant to 90-3-1301(3), and reimbursements to be used for the purposes of 90-3-1301.

History: En. Sec. 2, Ch. 383, L. 2009.

CHAPTER 4
ENERGY DEVELOPMENT AND CONSERVATION

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90-4-620 through 90-4-624 reserved.
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Parts 7 and 8 reserved

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90-4-1002. Repealed.
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90-4-1005. Energy development and demonstration grant program.
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90-4-1223. Interpretation.

Part 13 — Commercial Property-Assessed Capital Enhancements Act

90-4-1301. Short title.
90-4-1302. Definitions.
90-4-1303. Duties of authority related to community property-assessed capital enhancements program — rulemaking.
90-4-1304. Program authorized — contracts.
90-4-1305. Elements of program plan — contract requirements.
90-4-1306. Establishment of program.
90-4-1307. Assessments.
90-4-1308. Joint programs.

Chapter Cross-References

Montana Environmental Policy Act, Title 75, ch. 1.
Water quality, Title 75, ch. 5.
Solid waste management or material recycling, Title 75, ch. 10.
Montana Major Facility Siting Act, Title 75, ch. 20.
Geothermal resources, Title 77, ch. 4, part 1.
Power sites on state lands, 77-4-204.
Water resource development, Title 85, ch. 1.

Part 1
Renewable Energy Sources Research and Development (Renumbered and Repealed)

90-4-101. Repealed. Sec. 14, Ch. 405, L. 2003.

History: En. 84-7407 by Sec. 1, Ch. 501, L. 1975; R.C.M. 1947, 84-7407; amd. Sec. 1, Ch. 624, L. 1979; amd. Sec. 1, Ch. 356, L. 1981; amd. Sec. 1, Ch. 98, L. 1983.

90-4-102. Repealed. Sec. 14, Ch. 405, L. 2003.

History: En. 84-7408 by Sec. 2, Ch. 501, L. 1975; R.C.M. 1947, 84-7408; amd. Sec. 2, Ch. 98, L. 1983; amd. Sec. 1, Ch. 730, L. 1985; amd. Sec. 491, Ch. 418, L. 1995; amd. Sec. 24, Ch. 591, L. 2001.

90-4-103. Repealed. Sec. 14, Ch. 405, L. 2003.

History: (1)En. 84-7409 by Sec. 3, Ch. 501, L. 1975; R.C.M. 1947, 84-7409; amd. Sec. 3, Ch. 98, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; (2), (3)En. Sec. 4, Ch. 8, Sp. L. June 1986; amd. Secs. 2, 7, Ch. 626, L. 1989; amd. Sec. 492, Ch. 418, L. 1995; amd. Sec. 32, Ch. 389, L. 1999.

90-4-104. Repealed. Sec. 14, Ch. 405, L. 2003.

History: En. 84-7410 by Sec. 5, Ch. 501, L. 1975; R.C.M. 1947, 84-7410; amd. Sec. 2, Ch. 356, L. 1981; amd. Sec. 4, Ch. 98, L. 1983; amd. Sec. 2, Ch. 730, L. 1985; amd. Sec. 1, Ch. 8, Sp. L. June 1986.

90-4-105. Repealed. Sec. 14, Ch. 405, L. 2003.

History: En. 84-7411 by Sec. 6, Ch. 501, L. 1975; R.C.M. 1947, 84-7411; amd. Sec. 3, Ch. 356, L. 1981; amd. Sec. 5, Ch. 98, L. 1983.

90-4-106. Repealed. Sec. 14, Ch. 405, L. 2003.

History: En. 84-7412 by Sec. 7, Ch. 501, L. 1975; R.C.M. 1947, 84-7412; amd. Sec. 4, Ch. 356, L. 1981; amd. Sec. 1, Ch. 402, L. 1981; amd. Sec. 6, Ch. 98, L. 1983; amd. Sec. 3, Ch. 730, L. 1985; amd. Sec. 33, Ch. 389, L. 1999.

90-4-107. Renumbered 90-4-111. Code Commissioner, 1985.

90-4-108. Renumbered 90-4-112. Code Commissioner, 1985.

90-4-109. Repealed. Sec. 14, Ch. 405, L. 2003.

History: En. Sec. 4, Ch. 730, L. 1985; amd. Sec. 2, Ch. 8, Sp. L. June 1986; amd. Sec. 34, Ch. 389, L. 1999.

90-4-110 reserved.

90-4-111. Repealed. Sec. 14, Ch. 405, L. 2003.

History: En. 84-7413 by Sec. 8, Ch. 501, L 1975; R.C.M. 1935, 84-7413; amd. Sec. 2, Ch. 402, L. 1981; Sec. 90-4-107, MCA 1983; redes. 90-4-111 by Code Commissioner, 1985; amd. Sec. 3, Ch. 8, Sp. L. June 1986; amd. Sec. 63, Ch. 112, L. 1991; amd. Sec. 54, Ch. 349, L. 1993.

90-4-112. Repealed. Sec. 14, Ch. 405, L. 2003.

History: En. Sec. 3, Ch. 402, L. 1981; Sec. 90-4-108, MCA 1983; redes. 90-4-112 by Code Commissioner, 1985.

Part 2
Home Weatherization Programs

Part Cross-References

Authorization for counties to furnish assistance in rehabilitation of private dwellings, 7-15-2120.

Authorization for municipalities to furnish assistance in rehabilitation of private dwellings, 7-15-4103.

Taxation — energy-related incentives — credits and deductions, Title 15, ch. 32.

90-4-201. Weatherization money sources — consolidation. (1) All federal funds and grants available and becoming eligible to Montana under the provisions of the U.S. department of energy low-income weatherization assistance program, the U.S. department of health and human services low-income home energy assistance program, and any other federal funds intended to increase the energy efficiency of dwellings occupied by persons of low and fixed incomes, except for Title XX of the Social Security Act, are to be coordinated and are available for appropriation to the department of public health and human services.

(2) The department of public health and human services shall allocate and spend for home weatherization programs under this part at least 5% of the funds received from the U.S. department of health and human services low-income home energy assistance program if federal law permits this allocation.

History: **En. 35-601 by Sec. 2, Ch. 583, L. 1977; R.C.M. 1947, 35-601; amd. Sec. 9, Ch. 274, L. 1981; amd. Sec. 1, Ch. 390, L. 1985; amd. Sec. 562, Ch. 546, L. 1995; amd. Sec. 18, Ch. 10, L. 2009.**

Cross-References

Taxation — energy-related incentives, Title 15, ch. 32.

90-4-202. Allocation formula. (1) The department of public health and human services may use not more than 5% of the total weatherization funds for administration of the weatherization program.

(2) Each of the human resource development councils or other public or nonprofit entities shall receive that fraction of the remaining money as the number of eligible households in its geographic area bears to the total number of eligible households in the state.

(3) The department of public health and human services may transfer weatherization money among the human resource development councils or other public or nonprofit entities if it finds that the money is not being expended in accordance with the terms of the agreements executed to carry out the provisions and purposes of this section and federal laws and regulations.

(4) Each of the human resource development councils or other public or nonprofit entities shall submit plans and proposed agreements to the units of local government in the district for review and comment before the agreements are approved by the department of public health and human services.

History: **En. 35-602 by Sec. 3, Ch. 583, L. 1977; R.C.M. 1947, 35-602; amd. Sec. 1, Ch. 521, L. 1979; amd. Sec. 9, Ch. 274, L. 1981; amd. Sec. 2, Ch. 390, L. 1985; amd. Sec. 563, Ch. 546, L. 1995.**

Cross-References

Human resource development councils, Title 53, ch. 10, part 5.

90-4-203. Annual allocation. State and federal weatherization funds shall be allocated to local weatherization programs on an annual basis.

History: **En. 35-603 by Sec. 4, Ch. 583, L. 1977; R.C.M. 1947, 35-603.**

90-4-204 through 90-4-209 reserved.

90-4-210. Policy. As the result of overcharges on the sales of domestic crude oil, the federal courts have ordered or approved settlements requiring the repayment of the total amount of overcharges, plus interest, into an escrow account to be distributed by the U.S. treasury to the states, territories, and possessions of the United States. It is the policy of this state to use the oil overcharge money distributed to the state to supplement state and federal programs that the state administers in a manner consistent with federal court orders establishing or approving the payment of the funds to the state of Montana and in accordance with the precedent established by the U.S. congress in appropriating money to federal programs.

History: **En. Sec. 1, HB 621, L. 1987.**

90-4-211. Repealed. Sec. 32, Ch. 561, L. 1993.

History: **En. Sec. 4(6), HB 621, L. 1987.**

90-4-212 through 90-4-214 reserved.

90-4-215. Account established — use. (1) There is an energy conservation and energy assistance account within the federal special revenue fund established in 17-2-102.

(2) The amounts deposited in the account and interest and earnings on the account may be used by the department of public health and human services to fund its low-income energy assistance and home weatherization programs created in 90-4-201.

History: **En. Sec. 3, HB 621, L. 1987; amd. Sec. 564, Ch. 546, L. 1995; amd. Sec. 35, Ch. 389, L. 1999; amd. Sec. 1, Ch. 4, L. 2007.**

Part 3
Energy Supply Emergency Powers

Part Cross-References

Disaster and emergency services, Title 10, ch. 3.

90-4-301. Legislative findings and intent. (1) The legislature finds that energy in various forms is increasingly subject to possible shortages and supply disruptions, to the point that there may be foreseen an emergency situation, and that without the ability to gather information, regularly monitor energy supplies and demand, formulate plans, and institute appropriate emergency measures to reduce or allocate the usage of energy through a program of mandatory usage curtailment or allocation, a severe impact on the health, safety, and general welfare of our state's citizens may occur. The prevention or mitigation of the effects of such energy shortages or disruptions is necessary for preservation of the public health and welfare of the citizens of this state.

(2) It is the intent of this part to:

(a) establish necessary planning, information gathering, and energy emergency powers for the governor and define the conditions under which such powers are to be exercised;

(b) provide for the regular monitoring of energy supplies and demand; however, nothing in this part may be construed to authorize the establishment of an independent state energy forecasting program; and

(c) provide penalties for violations of this part.

History: En. Sec. 1, Ch. 473, L. 1979; amd. Sec. 1, Ch. 204, L. 1981.

Cross-References

Powers and duties of Governor, 2-15-201.

90-4-302. Definitions. As used in this part, the following definitions apply:

(1) "Bulk pipeline terminal" means a facility that is primarily used for storage for the marketing of petroleum products and that has a total bulk storage capacity of 50,000 gallons or more.

(2) "Distributor" means any person, private corporation, partnership, producer, individual proprietorship, public utility, joint operating agency, or cooperative that engages in or is authorized to engage in the activity of generating, producing, transmitting, or distributing energy in this state.

(3) "Energy" means petroleum or other liquid fuels, natural or synthetic fuel gas, or electricity.

(4) "Energy emergency" means:

(a) an existing or imminent domestic, regional, or national shortage of energy that will result in curtailment of essential services or production of essential goods or the disruption of significant sectors of the economy unless action is taken to conserve or limit the use of the energy form involved and the allocation of available energy supplies among users or to increase the available supply of energy; or

(b) a price of energy that will:

(i) result in curtailment of essential services or production of essential goods or the disruption of significant sectors of the economy; or

(ii) impose a threat to the health or safety of those segments of the population who are most in need, as defined by their economic, social, or medical circumstances.

(5) "Energy facility" means a facility that produces, extracts, converts, transports, or stores energy.

(6) "Energy supply alert" means a condition of energy supply on a national, regional, state, or local basis that foreseeably will affect significantly the availability of essential energy supplies within the ensuing 90-day period unless action is taken under 90-4-309 to reduce energy usage by state agencies and political subdivisions or action is taken to increase the supply of energy.

(7) "Person" means an individual, partnership, joint venture, private or public corporation, cooperative, association, firm, public utility, political subdivision, municipal corporation, government agency, joint operating agency, or any other entity, public or private, however organized.

(8) "Petroleum pipeline company" means a person who owns or operates in Montana any pipeline used for the transportation of petroleum products or their derivatives. This definition does not include pipelines used to transport crude petroleum from producing wells to refineries.

(9) "Petroleum products" means propane, butane, propane/butane mix, motor gasoline, kerosene and other middle distillates, aviation gasoline, jet fuel, number 4 fuel oil, residual fuel oil, and alcohol fuels, whether in natural or synthetic form.

(10) "Prime petroleum supplier" means the person who makes the first sale of a petroleum product into the state distribution system. Any person who is considered to be a Montana prime supplier by the U.S. department of energy is included in this definition.

(11) "Refiner" means a person that owns, operates, or controls the operations of one or more refineries located in Montana.

(12) "Refinery" means an industrial plant, regardless of capacity, that processes fossil or renewable feedstock or manufactures refined petroleum products, except when the plant exclusively produces petrochemicals.

History: **En. Sec. 2, Ch. 473, L. 1979; amd. Sec. 2, Ch. 204, L. 1981; amd. Sec. 74, Ch. 545, L. 1995; amd. Sec. 1, Ch. 593, L. 2001; amd. Sec. 2, Ch. 182, L. 2007.**

90-4-303. Repealed. Sec. 82, Ch. 545, L. 1995.

History: **En. Sec. 3, Ch. 473, L. 1979.**

90-4-304. Supply of vital public services during an energy supply alert and energy emergency. The governor shall, with the advice of the committee, in developing provisions for the allocation, conservation, and consumption of energy, give due consideration to supplying vital public services such as essential governmental operations, health and safety functions, emergency services, public mass transportation systems, food production and processing facilities, and energy supply facilities during conditions of an energy supply alert or energy emergency. In developing any energy allocation programs, provisions shall be made for the equitable distribution of energy among the geographic areas of the state which are experiencing an energy shortage.

History: **En. Sec. 4, Ch. 473, L. 1979.**

Cross-References

Emergency resource management, Title 10, ch. 3, part 5.

90-4-305. Information obtainable by governor. (1) The governor may obtain information on a regular basis from energy resource producers, suppliers, public agencies, and consumers and from political subdivisions in this state that is necessary for the governor to determine the need for energy supply alert and emergency declarations. The information may include but is not limited to:

(a) sales volumes by customer classifications other than for petroleum products;

(b) forecasts of energy resource requirements for the particular type of energy involved for a period not to exceed 2 years; and

(c) inventory of energy resources and reserves available for use in meeting a shortage in a particular energy source.

(2) In order to help anticipate and mitigate the effects of shortages of petroleum products, the governor may monitor the supply of and demand for these products by obtaining the following monthly reports submitted no later than 20 days after the last day of the month, on forms prescribed by the governor, from the following persons:

(a) Each refiner shall submit Montana refinery processing data by fuel type in custody, including:

(i) inventory stocks at the beginning and end of the month;

(ii) receipts during the month;

(iii) inputs during the month;

(iv) production during the month;

(v) shipments, losses, and refinery fuel use during the month.

(b) Each prime petroleum supplier shall submit:

(i) 3-month projections of the supplier's Montana supply and stock of petroleum products that the supplier anticipates supplying to Montana customers; and

(ii) the actual volume of petroleum products delivered in the state the previous month.

(c) Each petroleum pipeline company shall submit reports by fuel type of Montana pipeline terminal delivery, throughput, and export.

(d) Each bulk pipeline terminal operator shall submit end-of-month reports of inventory stock levels of finished petroleum products in custody in Montana by type of product and storage location.

(e) Each prime petroleum supplier shall submit quarterly reports of monthly marketing sales in Montana, by standard point locater index or other method prescribed by the governor, and fuel type of petroleum products designated by the governor.

(3) In obtaining information under subsections (1) and (2) during a state of energy emergency, the governor may:

(a) subpoena witnesses, material, and relevant books, papers, accounts, records, and memoranda;

(b) administer oaths; and

(c) cause the depositions of persons residing within or outside of Montana to be taken in the manner prescribed for depositions in civil actions in district courts to obtain information relevant to energy resources that are the subject of the proclaimed emergency or associated disaster.

(4) In obtaining information under this section, the governor shall:

(a) avoid eliciting information already furnished by a person or political subdivision in this state to a federal, state, or local regulatory authority that is available for the governor's study; and

(b) cause reporting procedures, including forms, to conform to existing requirements of federal, state, and local regulatory authorities.

(5) Except as provided in subsection (2), this part does not require the disclosure by a distributor of confidential information, trade secrets, or other facts of a proprietary nature.

(6) (a) The information required under subsection (2) is subject to the following restrictions:

(i) Except in accordance with a proper judicial order, a public officer or employee charged by the governor with the custody of this information may not divulge or make known in any manner any information that is specific to a particular distributor.

(ii) The public officers and employees charged by the governor with the custody of the information provided for in subsection (2) may not be required to produce any of it or evidence of anything contained in it on behalf of any party to any action or proceeding under this part except when the information concerned is directly involved in the action or proceeding, in which case only that information directly pertinent to the action or proceeding may be admitted.

(b) This section does not preclude access to the information by the legislative auditor in carrying out the functions under Title 5, chapter 13.

History: En. Sec. 5, Ch. 473, L. 1979; amd. Sec. 3, Ch. 204, L. 1981; amd. Sec. 75, Ch. 545, L. 1995; amd. Sec. 2868, Ch. 56, L. 2009.

Cross-References

General authority of Governor — emergencies, 10-3-104.

90-4-306. Advice of distributors and consumers. The governor shall actively solicit the advice of consumers, through the legislative consumer committee established in 5-15-101, and of distributors throughout the information gathering, planning, and implementation process described in this part.

History: En. Sec. 6, Ch. 473, L. 1979.

Cross-References

Consumer Counsel, Art. XIII, sec. 2, Mont. Const.; 5-15-201.

Legislative Consumer Committee, Title 5, ch. 15, part 1.

Communications — emergencies, 10-3-106.

90-4-307. Submission and approval of curtailment plans. (1) The governor may at any time require a distributor of an energy resource to prepare for the governor's approval a plan for the curtailment of the distribution of that resource in the event of a state of energy emergency. Plans must be submitted in the form and within limits that the governor shall specify and must recognize the obligations and duties that may be placed upon distributors subject to this part by other jurisdictions, both state and federal.

(2) Approval of plans for curtailment must be based on the following factors:

(a) the consistency of the plan with the public health, safety, and welfare;

(b) the technical feasibility of implementation of the plan;

(c) the effectiveness with which the plan minimizes the impact of any curtailment;

(d) the needs of commercial, agricultural, retail, professional, and service establishments whose normal function is to supply goods or services, or both, of an essential nature, including but not limited to food, lodging, fuel, and medical care facilities; and

(e) the regional agreements or contracts of the distributors.

History: En. Sec. 7, Ch. 473, L. 1979; amd. Sec. 76, Ch. 545, L. 1995.

Cross-References

General authority of Governor — emergencies, 10-3-104.

90-4-308. Governor's considerations. In determining whether to declare an energy supply alert or energy emergency, the governor shall consider:

(1) availability of regional and national energy resources;

(2) local, state, regional, and national energy needs and shortages;

(3) availability of short-term alternative supplies on a local, state, regional, and national basis;

(4) the economic effect of the declaration and the implementation of any curtailment or conservation plans;

and

(5) any other relevant factors.

History: En. Sec. 8, Ch. 473, L. 1979; amd. Sec. 77, Ch. 545, L. 1995.

Cross-References

Proclamation of emergency — effect and termination, 10-3-505.

90-4-309. Energy supply alert. (1) The governor may, upon finding that an energy alert condition exists, declare an energy alert for a period of not longer than 90 days, setting forth the reasons for the alert. The declaration may be renewed for 90-day periods upon a finding that the energy alert condition will continue for the further period.

(2) Whenever the governor has declared an energy supply alert, the governor may by executive order direct actions:

(a) reducing energy resource usage by state agencies and political subdivisions;

(b) promoting conservation, prevention of waste, and salvage of energy resources and the materials, services, and facilities derived from energy resources or dependent on energy resources by state agencies and political subdivisions.

History: En. Sec. 9, Ch. 473, L. 1979; amd. Sec. 2869, Ch. 56, L. 2009.

Cross-References

Proclamation of emergency — effect and termination, 10-3-505.

90-4-310. Energy emergency powers of governor. In addition to existing powers and duties, the governor has the following duties and special energy emergency powers, subject to the definitions and limitations in this part:

(1) The governor may, upon finding that a situation exists that threatens to seriously disrupt or diminish energy supplies to the extent that life, health, or property may be jeopardized, declare a condition or state of energy emergency, at which time all of the general and specific emergency powers enumerated in this section become effective.

(2) The condition of energy emergency terminates after 90 consecutive days unless extended by a declaration of the legislature by joint resolution of a continuing condition of energy emergency of a duration to be established by the legislature.

(3) The conditions of an energy emergency alternatively cease to exist upon a declaration to that effect by either of the following:

(a) the governor; or

(b) the legislature, by joint resolution if in regular or special session.

(4) In a declared state of energy emergency, the governor may:

(a) implement programs, controls, standards, priorities, and quotas for the production, allocation, conservation, and consumption of energy, including plans for the curtailment of energy. However, in so doing, the governor may impose controls, quotas, or curtailments according to the nature of the end use to be made of the energy consistent with existing transmission and distribution systems serving the geographic area affected by the energy emergency.

(b) suspend and modify existing pollution control standards and requirements or any other standards or requirements affecting or affected by the use of energy, including those relating to air or water quality control; and

(c) establish and implement regional programs and agreements for the purposes of coordinating the energy programs and actions of the state with those of the federal government and of other states, localities, and other persons.

(5) Except as provided in 90-4-313, this part does not mean that any program, control, standard, priority quota, or other policy created under the authority of the emergency powers authorized by this part has any continuing legal effect after the cessation of a declared state of energy emergency.

(6) Because of the emergency nature of this part, all actions authorized or required under this part or taken pursuant to any order issued by the governor are exempted from all requirements and provisions of the Montana Environmental Policy Act, including but not limited to the requirement for environmental impact statements.

(7) Except as provided in this section, this part does not exempt a person from compliance with the provisions of any other law, rule, or directive unless specifically ordered by the governor or unless impossibility of compliance is a direct result of an order of the governor.

History: En. Sec. 10, Ch. 473, L. 1979; amd. Sec. 1, Ch. 387, L. 1981; amd. Sec. 78, Ch. 545, L. 1995; amd. Sec. 2, Ch. 593, L. 2001.

Cross-References

General authority of Governor — emergencies, 10-3-104.
Emergency resource management — Governor's powers and duties, 10-3-503.

90-4-311. Obligations of state and local executives. To protect the public welfare during conditions of energy alerts or emergencies, the chief executive of each political subdivision of the state, including local governments with self-government power, and each state agency shall carry out in its jurisdiction such energy supply alert or energy emergency measures as may be ordered by the governor.

History: En. Sec. 11, Ch. 473, L. 1979.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.
Intergovernmental cooperation in emergencies, Title 10, ch. 3, part 2.
Local and interjurisdictional planning and execution — emergencies, 10-3-401.

90-4-312. Coordination with federal provisions. In order to attain uniformity, as far as is practicable throughout the country in measures taken to aid in energy crisis management, all action taken under this part and all orders and rules made pursuant to it shall be taken or made with due consideration for and consistent when practicable with the orders, rules, actions, recommendations, and requests of federal authorities.

History: En. Sec. 12, Ch. 473, L. 1979.

Cross-References

State planning and execution — emergencies, Title 10, ch. 3, part 3.

90-4-313. Compliance. Notwithstanding any provision of law or contract to the contrary, all persons who are specifically ordered by the governor to comply with an order issued or action taken pursuant to this part shall comply. A proceeding or project that is commenced under an energy emergency may proceed to completion even if the completion occurs after the termination of the emergency.

History: En. Sec. 13, Ch. 473, L. 1979; amd. Sec. 79, Ch. 545, L. 1995; amd. Sec. 3, Ch. 593, L. 2001.

Cross-References

Disaster and emergency services — general authority of Governor, 10-3-104.
Emergency resource management — Governor's powers and duties, 10-3-503.

90-4-314. Orders to distributors. The governor may order any distributor to take action on the governor's behalf as may be required to implement orders issued pursuant to 90-4-310, and a distributor or person is not liable for actions taken in accordance with an order.

History: En. Sec. 14, Ch. 473, L. 1979; amd. Sec. 2870, Ch. 56, L. 2009.

Cross-References

Disaster and emergency services — general authority of Governor, 10-3-104.
Emergency resource management — Governor's powers and duties, 10-3-503.

90-4-315. Liability. No distributor or person is liable for damages to persons or property resulting from action taken in accordance with orders or rules issued pursuant to this part or actions taken pursuant to orders, rules, actions, recommendations, and requests of federal authorities.

History: En. Sec. 15, Ch. 473, L. 1979.

90-4-316. Rules and executive orders. Notwithstanding the exemption from the provisions of the Montana Administrative Procedure Act granted to the governor in Title 2, chapter 4, MCA, the governor may adopt rules necessary to implement this part and cause their adoption and publication to be completed in the same manner as the adoption and publication of agency rules. In addition, executive orders of the governor implementing provisions of this part shall be published in the Montana Administrative Register upon request of the governor.

History: En. Sec. 16, Ch. 473, L. 1979.

Cross-References

Disaster and emergency services — general authority of Governor, 10-3-104.
Emergency resource management — Governor's powers and duties, 10-3-503.

90-4-317. Disaster and emergency laws supplemented. The powers vested in the governor under this part are in addition to and not in lieu of emergency powers vested in the governor under Title 10, chapter 3, or any other law of Montana.

History: En. Sec. 17, Ch. 473, L. 1979; amd. Sec. 2871, Ch. 56, L. 2009.

90-4-318. Governor may authorize expenditure. The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an energy emergency is declared by the governor and justifies the expenditure as set forth in 10-3-311 for other emergency or disaster expenditures.

History: En. Sec. 18, Ch. 473, L. 1979.

90-4-319. Penalties. A person convicted of violating this part is guilty of a misdemeanor. Each day of violation, after notice of violation, constitutes a separate offense.

History: En. Sec. 19, Ch. 473, L. 1979.

Cross-References

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Misdemeanor penalty when none specified, 46-18-212.

Part 4

Pacific Northwest Electric Power and Conservation Planning Council

90-4-401. Agreement to pacific northwest electric power and conservation planning council. The state of Montana agrees through this part and through the appointment of persons as provided in this part to formation of and participation in the pacific northwest electric power and conservation planning council, hereafter referred to in this part as "the council", and to the performance of the functions and duties of the council as provided in the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96-501).

History: En. Sec. 1, Ch. 50, L. 1981.

90-4-402. Appointment of council members by governor. (1) In accordance with subsections (6) through (8), the governor shall appoint at the beginning of each gubernatorial term two persons to serve as members of the council as provided in Public Law 96-501.

(2) (a) An appointment of a council member by the governor is subject to the confirmation of the senate, except that the governor may appoint a council member to assume office before the senate meets in its next regular session to consider the appointment. A member appointed by the governor is vested with all the functions of the office upon assuming the office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment.

(b) If the senate does not confirm the appointment of a member in accordance with subsection (2)(a), the governor shall make a new appointment who is subject to confirmation by the senate.

(3) A council member serves at the pleasure of the governor. The governor may remove a council member at any time and appoint a new member to the office. If the governor removes a council member and appoints a new member to the office, the new member is subject to confirmation by the senate.

(4) If a vacancy occurs in the office of a council member, the governor shall appoint, as soon as reasonably possible, a new member to serve at the pleasure of the governor. If a vacancy occurs and the governor appoints a member to the office, the new member is subject to confirmation by the senate.

(5) If an appointment is made by the governor in accordance with subsections (2) through (4) when the senate is not in regular session, confirmation must occur during the next regular session.

(6) When making an appointment in accordance with subsection (1), the governor shall consider a potential candidate's previous experience, training, and education related to the duties and functions of the council and the priorities contained in Public Law 96-501.

(7) (a) The governor shall appoint members with experience or education in one or more of the following matters:

(i) economic, legal, social, and political aspects of energy production and distribution;

(ii) fish and wildlife management; or

(iii) the use, distribution, and protection of watersheds located in the Pacific Northwest.

(b) The governor shall consider potential members with an understanding of and familiarity with the impacts of members' actions on the electricity rates of Montana utilities and residents receiving their power supply from the Bonneville power administration.

(8) At least one member appointed to the council must be a resident in a county served in whole or in part by a Montana utility, as defined in 69-5-102, receiving at least one-third of its power supply from the Bonneville power administration.

History: En. Sec. 2, Ch. 50, L. 1981; amd. Sec. 1, Ch. 176, L. 2017.

Cross-References

Powers and duties of Governor, 2-15-201.

90-4-403. Duties of council members. The council members shall:

(1) undertake the functions and duties prescribed by Public Law 96-501 and in applicable state law, including engaging with utilities receiving their power supply from the Bonneville power administration to promote an adequate, economical, and reliable power supply;

(2) serve on a full-time basis; and

(3) prepare and provide an annual report to the governor and to the legislature, as required by 5-11-210, and to each utility located in Montana receiving its power supply from the Bonneville power administration. The report must be completed by December 1 of each year and must detail council actions during the previous 12 months and the impacts of those actions on Montana utilities and residents receiving their power supply from the Bonneville power administration.

History: En. Sec. 3, Ch. 50, L. 1981; amd. Sec. 1, Ch. 98, L. 1985; amd. Sec. 2, Ch. 176, L. 2017.

90-4-404. Compensation of council members. Each member shall receive compensation to be determined by the governor, in consultation with the governors of the participating states, and according to applicable federal law.

History: En. Sec. 4, Ch. 50, L. 1981.

90-4-405. Council members to hold public hearings in areas affected by acquisition of major resources. (1) Whenever the northwest conservation and electric power plan or any amendment to the plan calls for the acquisition of major resources, as defined in 16 U.S.C. 839a, from an area of Montana east of the continental divide, the Montana council members shall hold at least one public hearing in the geographic area from which the major resources are proposed to be acquired and that will be affected by the proposed acquisition.

(2) The Montana council members shall request the participation of the other members of the council in conducting the public hearing required under subsection (1).

(3) The Montana council members shall give notice in a newspaper of general circulation in the area affected by the proposed acquisition of major resources at least 2 weeks before the public hearing required by subsection (1). The public hearing must be held at least 30 days before any final decision is made to incorporate into the plan the acquisition of major resources from the affected area.

History: En. Sec. 1, Ch. 335, L. 1991.

Part 5
Residential Conservation Service
(Repealed)

90-4-501. Repealed. Sec. 1, Ch. 184, L. 1993.

History: En. Sec. 1, Ch. 137, L. 1981.

90-4-502. Repealed. Sec. 1, Ch. 184, L. 1993.

History: En. Sec. 2, Ch. 137, L. 1981.

90-4-503. Repealed. Sec. 1, Ch. 184, L. 1993.
History: **En. Sec. 3, Ch. 137, L. 1981.**

90-4-504. Repealed. Sec. 1, Ch. 184, L. 1993.
History: **En. Sec. 4, Ch. 137, L. 1981.**

Part 6
State Building Energy Conservation Program

90-4-601. Short title. This part may be cited as the "State Building Energy Conservation Act".
History: **En. Sec. 1, Ch. 473, L. 1989.**

90-4-602. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Cost" includes the expenses related to planning, design, construction, and installation of energy conservation improvements and any administrative expenses of the division incurred in the performance of its duties under the energy conservation program.

(2) "Division" means the architecture and engineering division of the department of administration provided for in 17-7-201.

(3) "Energy conservation program" means a program for the financing, acquisition, construction, and installation of alternative energy systems, as defined in 15-32-102, or equipment, systems, and improvements in state-owned buildings, structures, and facilities that save utility and associated operation and maintenance costs.

(4) "Energy cost savings" means the savings in utility and associated operation and maintenance costs to a state agency as a result of an energy conservation program.

(5) "Participating state agency" means, for a state-owned building, structure, or facility, the state agency that pays for the utilities for that building.

(6) "State agency" means:
(a) each executive, legislative, or judicial branch department, office, or agency;
(b) the university system; and
(c) a community college district.

History: **En. Sec. 2, Ch. 473, L. 1989; amd. Sec. 493, Ch. 418, L. 1995; amd. Sec. 1, Ch. 497, L. 2003; amd. Sec. 15, Ch. 478, L. 2009; amd. Sec. 1, Ch. 241, L. 2025; amd. Sec. 1, Ch. 419, L. 2025.**

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 1, Ch. 241, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 419, L. 2025. Amendment effective July 1, 2025.

90-4-603 and 90-4-604 reserved.

90-4-605. Preparation of energy conservation program. (1) The division shall identify buildings or building systems that have a potential for energy savings, based on age, energy use, function, and condition of the building. On request of the division, a state agency shall provide the division with information necessary to allow the division to comply with this requirement.

(2) Based on the criteria in subsection (1) and on the feasibility of leveraging other funds, such as federal and utility energy conservation program money, the division shall select certain facilities for in-depth energy analyses to identify the technical and financial feasibility of making energy conservation improvements to the facilities.

(3) (a) On completion of the energy analyses, the division shall identify estimated costs and savings to the state based on these analyses.

(b) The division shall identify each project for which the estimated savings are determined to be greater than the cost of the project plus annual interest payments on the unpaid balance of the cost of the project.

(c) The division shall implement a design and construction project using funds from the general fund or the energy conservation capital projects account established in 90-4-617 for the costs of the project.

(4) The division shall compile a report that must include the following:
(a) a listing of contacts between the division and other state agencies;

(b) a summary of the division's review of agency requests and a selection of projects for in-depth analysis;

(c) a summary of the energy analyses conducted by the division, including the estimated cost of each proposed project and the estimated energy cost savings of each proposed project; and

(d) a listing of additional projects under consideration, for which energy analyses have not been conducted.

(5) The division shall submit the report required by subsection (4) to the governor before September 1 of each even-numbered year.

(6) The division shall set the annual interest rate for projects funded by the energy conservation program by July 1 of each year. The annual interest rate may not exceed 3%. The division may set the annual interest rate to cover administrative costs of the program.

History: En. Sec. 3, Ch. 473, L. 1989; amd. Sec. 5, Ch. 61, L. 1995; amd. Sec. 1, Ch. 50, L. 1999; amd. Sec. 1, Ch. 240, L. 2001; amd. Sec. 1, Ch. 310, L. 2005; amd. Sec. 1, Ch. 240, L. 2011; amd. Sec. 9, Ch. 241, L. 2025.

Compiler's Comments

2025 Amendment — Coordination: See 2025 Session Law for amendment made by sec. 9, Ch. 241, L. 2025. Amendment effective July 1, 2025.

The amendments to this section made by sec. 2, Ch. 241, L. 2025, and sec. 2, Ch. 419, L. 2025, were replaced by sec. 9, Ch. 241, L. 2025, a coordination section.

90-4-606. Program report and recommendations. The governor shall submit the projects proposed to be funded by the energy conservation program for the next biennium as a part of the budget required by 17-7-123. The governor shall make available, as provided by 17-7-124:

(1) the report prepared by the department; and

(2) the proposed method of financing the improvement.

History: En. Sec. 4, Ch. 473, L. 1989; amd. Sec. 53, Ch. 349, L. 1993; amd. Sec. 2, Ch. 240, L. 2001; amd. Sec. 3, Ch. 419, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 419, L. 2025. Amendment effective July 1, 2025.

90-4-607. Duties of division. In addition to the duties set forth in 90-4-605, the division is authorized to:

(1) analyze state utility data to identify high-potential energy conservation projects;

(2) perform comprehensive energy analyses on state-owned buildings, structures, and facilities, contracting with private engineers when necessary;

(3) procure, design, and construct cost-effective energy improvements;

(4) transfer funds and authority to other agencies to procure, design, and construct cost-effective energy improvements; and

(5) train facility maintenance staff in energy saving techniques and maintenance of energy improvements and monitor energy conservation projects to ensure that cost savings are realized.

History: En. Sec. 5, Ch. 473, L. 1989; amd. Sec. 5, Ch. 350, L. 1993; amd. Sec. 2, Ch. 50, L. 1999; amd. Sec. 10, Ch. 241, L. 2025.

Compiler's Comments

2025 Amendment — Coordination: See 2025 Session Law for amendment made by sec. 10, Ch. 241, L. 2025. Amendment effective July 1, 2025.

The amendments to this section made by sec. 3, Ch. 241, L. 2025, and sec. 4, Ch. 419, L. 2025, were replaced by sec. 10, Ch. 241, L. 2025, a coordination section.

90-4-608 through 90-4-610 reserved.

90-4-611. Repealed. Sec. 11, Ch. 419, L. 2025.

History: En. Sec. 6, Ch. 473, L. 1989.

90-4-612. Repealed. Sec. 11, Ch. 419, L. 2025.

History: En. Sec. 7, Ch. 473, L. 1989; amd. Sec. 2, Ch. 240, L. 2011.

90-4-613. Creation and use of energy conservation program account. (1) There is created an energy conservation program account within the state special revenue fund established in 17-2-102.

(2) The energy conservation program account must be segregated by the treasurer from all other money in that or any other fund in the state treasury and used only to pay costs of the energy conservation program. The department may transfer all money authorized by the legislature for its administrative expenditures from the energy conservation program account to a special revenue fund.

History: En. Sec. 8, Ch. 473, L. 1989; amd. Sec. 5, Ch. 571, L. 1991; amd. Sec. 5, Ch. 419, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 419, L. 2025. Amendment effective July 1, 2025.

90-4-614. Appropriation of energy cost savings. (1) In preparing the executive budget each biennium, the governor shall include for each state agency that is participating in the state energy conservation program using money from the energy conservation program account provided for in 90-4-613 an estimate of the energy cost savings expected for that agency in each year of the biennium.

(2) Each session, the legislature shall review the governor's submission pursuant to 90-4-606 and subsection (1) of this section and appropriate in the general appropriations act authority for each participating state agency to transfer funds in an amount equal to the agency's energy cost savings to the energy conservation program debt service account established in 90-4-625.

(3) The current level utility appropriations of each state agency participating in the energy conservation program must be reduced by the amount appropriated in subsection (2).

(4) Each participating state agency shall transfer on request of the department the amount appropriated in accordance with subsection (2).

History: En. Sec. 6, Ch. 350, L. 1993; amd. Sec. 2, Ch. 497, L. 2003; amd. Sec. 3, Ch. 240, L. 2011; amd. Sec. 6, Ch. 419, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 419, L. 2025. Amendment effective July 1, 2025.

90-4-615. Energy conservation repayment account. (1) There is an energy conservation repayment account in the state special revenue fund established in 17-2-102.

(2) There must be deposited in the energy conservation repayment account:

(a) the amount of energy costs saved as a result of energy conservation projects in state buildings, facilities, or structures using appropriations from the energy conservation capital projects account or the general fund for the energy conservation program;

(b) interest earned on the account;

(c) interest earned on the energy conservation capital projects account created in 90-4-617; and

(d) funds transferred to the account by the legislature.

(3) Money in the energy conservation repayment account is available to the division by appropriation to fund the costs of the energy conservation program for:

(a) conducting energy analysis;

(b) data collection and analysis;

(c) program administration and oversight;

(d) procurement, design, and construction costs for projects with energy cost savings considered not appropriate for funding through the repayment program; and

(e) monitoring the results of state building energy conservation projects.

(4) If the unencumbered funds in the account at the end of a biennium exceed $2 million, the division shall transfer to the energy conservation capital projects account the amount of funds in excess of $2 million.

History: En. Sec. 22, Ch. 3, Sp. L. May 2007; amd. Sec. 16, Ch. 478, L. 2009; amd. Sec. 4, Ch. 241, L. 2025; amd. Sec. 7, Ch. 419, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 4, Ch. 241, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 7, Ch. 419, L. 2025. Amendment effective July 1, 2025.

90-4-616. Transfer of energy savings from projects. (1) In preparing the executive budget each biennium, for each state agency participating in the energy conservation program by using appropriations from the general fund or the energy conservation capital projects account created in 90-4-617, the governor shall include an estimate of the energy cost savings expected for that agency in each year of the biennium.

(2) Each session, the legislature shall review the governor's submission pursuant to 90-4-606 and subsection (1) of this section and, unless the legislature disapproves, shall include in the general appropriations act authority for each participating state agency, subject to 90-4-619, to transfer funds in an amount equal to the agency's estimated energy cost savings to the energy conservation repayment account established in 90-4-615. Except as provided in 90-4-619, these transfers must continue until the cost of the project, including energy analysis, acquisition and installation costs of energy saving equipment or systems, and the cost of the construction of improvements in state buildings, facilities, or structures, plus annual interest payments at a rate set pursuant to 90-4-605(6) of the unpaid balance of the cost of the project, has been paid into the energy conservation repayment account.

(3) The current level utility appropriations of state agencies participating in the energy conservation program must be reduced by the sum of the amounts approved to be transferred pursuant to subsection (2).

(4) On request of the division, each participating state agency shall transfer the amounts approved pursuant to subsection (2).

History: En. Sec. 17, Ch. 478, L. 2009; amd. Sec. 5, Ch. 241, L. 2025; amd. Sec. 8, Ch. 419, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 5, Ch. 241, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 8, Ch. 419, L. 2025. Amendment effective July 1, 2025.

90-4-617. Energy conservation capital projects account. (1) There is an energy conservation capital projects account in the capital projects fund type established in 17-2-102.

(2) There must be deposited in the account:

(a) money transferred from the energy conservation repayment account; and

(b) other amounts transferred to the account by the legislature.

(3) Money in the account is available to the division by appropriation and may be used to pay the costs of the acquisition, installation, and construction of energy saving equipment, systems, or improvements in state buildings, facilities, or structures.

History: En. Sec. 18, Ch. 478, L. 2009; amd. Sec. 19, Ch. 6, Sp. L. November 2017; amd. Sec. 7, Ch. 241, L. 2025; amd. Sec. 9, Ch. 419, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 7, Ch. 241, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 9, Ch. 419, L. 2025. Amendment effective July 1, 2025.

90-4-618. Reappropriation of energy conservation projects. The remaining balances on energy conservation projects previously approved by the legislature are reappropriated for the purposes of the original appropriation until the projects are completed.

History: En. Sec. 19, Ch. 478, L. 2009.

90-4-619. Grandfathering — retention of funds. (1) The department of environmental quality shall retain federal American Recovery and Reinvestment Act funds allocated in accordance with Chapter 478, Laws of 2009, to the state energy building conservation program, including:

(a) transfers after July 1, 2025, made by participating state agencies pursuant to 90-4-616 for the unpaid balance of projects funded with federal American Recovery and Reinvestment Act funds;

(b) interest payments pursuant to 90-4-616 on projects funded with federal American Recovery and Reinvestment Act funds; and

(c) interest earned on short-term investment pool investments of federal American Recovery and Reinvestment Act funds.

(2) The department of environmental quality may use the funds for activities consistent with applicable federal requirements and in accordance with guidance provided by the federal department of energy for the repurposing of funds.

History: En. Sec. 6, Ch. 241, L. 2025.

Compiler's Comments

Effective Date: Section 11, Ch. 241, L. 2025, provided: "[This act] is effective July 1, 2025."

90-4-620 through 90-4-624 reserved.

90-4-625. Energy conservation program debt service account. There is an energy conservation program debt service account within the debt service fund type established in 17-2-102.

History: En. Sec. 4, Ch. 240, L. 2011; amd. Sec. 16, Ch. 469, L. 2019; amd. Sec. 10, Ch. 419, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 10, Ch. 419, L. 2025. Amendment effective July 1, 2025.

Parts 7 and 8 reserved

Part 9
Clean Coal Technology Program (Repealed)

90-4-901. Repealed. Sec. 2, Ch. 33, Sp. L. November 1993.

History: En. Sec. 4, Ch. 722, L. 1991.

90-4-902. Repealed. Sec. 2, Ch. 33, Sp. L. November 1993.

History: En. Sec. 5, Ch. 722, L. 1991.

90-4-903. Repealed. Sec. 2, Ch. 33, Sp. L. November 1993.

History: En. Sec. 6, Ch. 722, L. 1991.

90-4-904. Repealed. Sec. 2, Ch. 33, Sp. L. November 1993.

History: En. Sec. 7, Ch. 722, L. 1991.

90-4-905. Repealed. Sec. 2, Ch. 33, Sp. L. November 1993.

History: En. Sec. 8, Ch. 722, L. 1991.

90-4-906. Repealed. Sec. 2, Ch. 33, Sp. L. November 1993.

History: En. Sec. 9, Ch. 722, L. 1991.

Part 10
Alternative Energy and Fuels — Development and Policy

90-4-1001. Repealed. Sec. 1, Ch. 73, L. 2023.

History: En. Sec. 1, Ch. 242, L. 1993; amd. Sec. 1, Ch. 311, L. 1995; amd. Sec. 1, Ch. 454, L. 2009; amd. Sec. 1, Ch. 385, L. 2011; amd. Sec. 10, Ch. 291, L. 2021.

90-4-1002. Repealed. Sec. 3, Ch. 454, L. 2009.

History: En. Sec. 2, Ch. 242, L. 1993; amd. Sec. 494, Ch. 418, L. 1995; amd. Sec. 310, Ch. 42, L. 1997; amd. Sec. 2, Ch. 221, L. 2005.

90-4-1003. Repealed. Sec. 1, Ch. 73, L. 2023.

History: En. Sec. 3, Ch. 242, L. 1993; amd. Sec. 3, Ch. 221, L. 2005; amd. Sec. 2, Ch. 454, L. 2009; amd. Sec. 1, Ch. 43, L. 2011.

90-4-1004. Terminated. Sec. 5, Ch. 242, L. 1993.

History: En. Sec. 4, Ch. 242, L. 1993.

90-4-1005. Energy development and demonstration grant program. (1) There is an energy development and demonstration grant program within the department of environmental quality to fund technology development and demonstration:

(a) advancing the development and utilization of energy storage systems, including but not limited to mediums, such as accumulators, fuel cells, batteries, and green hydrogen storage systems as defined in 15-6-163, that store energy that may be drawn upon at a later date for use;

(b) developing storage systems specifically designed to store energy generated from eligible renewable resources, including but not limited to compressed air energy and green hydrogen storage systems;

(c) promoting the efficiency, environmental performance, and cost-competitiveness of energy storage systems beyond the current level of technology; and

(d) advancing the development of alternative energy systems as defined in 15-32-102 and green hydrogen facilities as defined in 15-6-163.

(2) Entities that may be eligible for grants include but are not limited to units of the Montana university system, agricultural research centers, or private entities or research centers.

(3) Money appropriated to the department of environmental quality for the purpose of the energy development and demonstration grant program may be used by the department for providing individual grants in amounts up to $500,000 and for administrative costs of 1% of the grant award.

(4) The grant application may include:

(a) a project plan sufficient to allow a reasonable determination regarding the potential feasibility of advancing energy storage or alternative energy systems;

(b) a business plan to allow a reasonable determination regarding the financial feasibility of the project; and

(c) a reporting process to ensure progress toward project goals.

(5) For the purposes of this section "eligible renewable resource" means a facility either located in the state or delivering electricity from another state into the state that commences commercial operation after January 1, 2005, or a hydroelectric project expansion referred to in subsection (5)(d)(iii), any of which produces electricity from one or more of the following sources:

(a) wind;

(b) solar;

(c) geothermal;

(d) water power, in the case of a hydroelectric project that:

(i) does not require a new appropriation, diversion, or impoundment of water and that has a nameplate rating of 10 megawatts or less;

(ii) is installed at an existing reservoir or on an existing irrigation system that does not have hydroelectric generation as of April 16, 2009, and has a nameplate capacity of 15 megawatts or less; or

(iii) is an expansion of an existing hydroelectric project that commences construction and increases existing generation capacity on or after October 1, 2013;

(e) landfill or farm-based methane gas;

(f) gas produced during the treatment of wastewater;

(g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic fuels from wood, forest, or field residues, including wood pieces that have been treated with chemical preservatives, such as creosote, pentachlorophenol, or copper-chrome arsenic, and that are used at a facility that has a nameplate capacity of 5 megawatts or less;

(h) hydrogen derived from any of the sources in this subsection for use in fuel cells; and

(i) the renewable energy fraction from:

(i) the sources identified in this subsection (5) of electricity production from a multiple-fuel process with fossil fuels;

(ii) flywheel storage as defined in 15-6-157(4)(d);

(iii) hydroelectric pumped storage as defined in 15-6-157(4)(e);

(iv) batteries; and

(v) compressed air derived from any of the sources in this subsection (5) that is forced into an underground storage reservoir and later released, heated, and passed through a turbine generator.

History: En. Sec. 59, Ch. 489, L. 2009; amd. Sec. 11, Ch. 291, L. 2021; amd. Sec. 2, Ch. 542, L. 2021.

90-4-1006 through 90-4-1009 reserved.

90-4-1010. Transportation energy policy. It is the transportation energy policy of the state of Montana to promote actions that encourage the conservation of energy through the environmentally responsible management and planning of efficient transportation systems. This policy further recognizes that energy conservation must be balanced with the state's interest in establishing, preserving, and maintaining a safe, efficient transportation system that equitably meets the mobility needs of Montana's citizens and connects them to the nation's economy.

History: En. Sec. 2, Ch. 311, L. 1995.

90-4-1011. Alternative fuels policy — implementing guidelines. (1) The state of Montana encourages the use of alternative fuels and fuel blends to the extent that doing so produces environmental and economic benefits to the citizens of Montana.

(2) To implement the policy stated in subsection (1), the legislature recommends the following guidelines:

(a) All policies and programs should have in-state benefits.

(b) Policies and programs should be coordinated among the affected agencies.

(c) The state recognizes incentives as a temporary tool to implement the alternative fuels policy. Recipients of those incentives should develop a plan, including an educational component, to phase out the incentive. In determining incentives, the state should:

(i) consider incentives for the producer, retail, and consumer levels;

(ii) establish a logical link between revenue sources and incentives; and

(iii) encourage the use of self-sufficient markets.

(d) Any state alternative fuels program should have measurable benefits that are communicated to the public.

(e) State and local governments should be encouraged to set an example with their vehicle fleets in the use of alternative fuels and fuel blends.

(f) Consistent with the guidelines in subsections (2)(a) through (2)(e), the state encourages production of alternative fuels and fuel blends.

History: **En. Sec. 3, Ch. 311, L. 1995.**

Cross-References

State vehicles to use gasohol, 2-17-414.
Ethanol-blended gasoline production equipment — classification for tax purposes, 15-6-135.
Refund of tax for certain uses of ethanol-blended gasoline, 15-70-425.
Tax incentive for production of alcohol to be used as ethanol-blended gasoline, Title 15, ch. 70, part 5.

Part 11
Local Government and State Agency Energy Performance Contracts

Part Cross-References

Public Contracts, Title 18.
Public Contracts Generally, Title 18, ch. 1.
Contracts and Other Obligations, Title 28.

90-4-1101. Legislative findings and policy. (1) The legislature finds that:

(a) conserving energy in public buildings and vehicles will have a beneficial effect on the overall supply of energy and can result in cost savings for taxpayers;

(b) conserving water can result in cost savings for taxpayers; and

(c) energy performance contracts are a means by which governmental entities can economically and expeditiously achieve energy and water conservation.

(2) It is the policy of the state of Montana to promote efficient use of energy and water resources in public buildings and energy conservation in vehicles by authorizing governmental entities to enter into energy performance contracts.

History: **En. Sec. 1, Ch. 162, L. 2005; amd. Sec. 4, Ch. 439, L. 2009; amd. Sec. 8, Ch. 344, L. 2015.**

90-4-1102. Definitions. As used in this part, the following definitions apply:

(1) "Cost-effective" or "cost-effectiveness" means that the sum of guaranteed cost savings and unguaranteed energy cost savings attributable to utility unit price escalation is equal to or greater than:

(a) the energy performance contract financing repayment obligation, if any, each year of a finance term;

(b) the total project cost of the cost-saving measures implemented divided by 20; or

(c) the total project cost of the cost-saving measures implemented divided by the cost-weighted average useful life of the cost-saving measures.

(2) "Cost-saving measure" means a facility improvement, repair, or alteration or equipment, fixtures, or furnishings added to or used in a facility and designed to reduce energy or water consumption or operation and maintenance costs. The term also includes vehicle acquisitions, changes to utility rate or tariff schedules, or fuel source changes that result in cost savings.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Energy performance contract" means a cost-effective contract between a governmental entity and a qualified energy service provider for implementation of one or more cost-saving measures and guaranteed cost savings.

(5) "Finance term" means the length of time for repayment of funds borrowed for an energy performance contract.

(6) "Governmental entity" means:

(a) a department, board, commission, institution, or branch of state government;

(b) a county, consolidated city-county government, city, town, or school district;

(c) a special district, as defined in 2-2-102;

(d) the university system or a unit of the university system; or

(e) a community college district.

(7) "Guarantee period" means the period of time from the effective date of the contract until guaranteed cost savings are achieved in accordance with 90-4-1114(5).

(8) "Guaranteed cost savings" means a guaranteed annual measurable monetary reduction in utility and operating and maintenance costs for each year of a guarantee period resulting from cost-saving measures. Guaranteed cost savings for utility cost savings must be calculated using mutually agreed on baseline utility rates in use at the time of an investment-grade energy audit. Guaranteed cost savings for operation and maintenance cost savings must be calculated using mutually agreed on baseline operation and maintenance costs at the time of an investment-grade energy audit.

(9) "Investment-grade energy audit" means a study of energy or water usage of a public building performed by a qualified energy service provider utilizing a professional engineer licensed in the state of Montana. It includes detailed descriptions of the improvements recommended for the project, the estimated costs of the improvements, and the operation and maintenance cost savings and utility cost savings projected to result from the recommended improvements. The study must contain all information required pursuant to 90-4-1113(2).

(10) "Measurement and verification" means the methodology, measurements, inspections, and mathematical calculations to determine utility consumption before and after an energy performance contract is implemented. The measurement and verification report may be for an individual cost-saving measure or an entire project.

(11) "Operation and maintenance cost savings" means a measurable decrease in operation and maintenance costs as a direct result of cost-saving measures calculated using baseline operation and maintenance costs. The term does not include the shifting of personnel costs or similar short-term cost savings that cannot be definitively measured.

(12) "Person" means an individual, corporation, partnership, firm, association, cooperative, limited liability company, limited liability partnership, or any other similar entity.

(13) "Qualified energy service provider" means a person included on the department's list of qualified energy service providers.

(14) "Total project cost" means the total cost of the project, including costs of the investment-grade energy audit, energy performance contract, measurement and verification, and financing.

(15) "Utility cost savings" means expenses for utilities that are eliminated or avoided on a long-term basis as a result of equipment installed or modified or services performed by a qualified energy service provider. Utility cost savings include expenses for natural gas, propane or similar fuels, electricity, water, wastewater, and waste disposal.

History: En. Sec. 2, Ch. 162, L. 2005; amd. Sec. 5, Ch. 439, L. 2009; amd. Sec. 9, Ch. 344, L. 2015; amd. Sec. 1, Ch. 311, L. 2019.

90-4-1103. Authority to enter into energy performance contracts. (1) A governmental entity may enter into an energy performance contract. A governmental entity that enters into an energy performance contract shall do so in accordance with this part.

(2) Nothing in this part prevents a governmental entity from entering into a contract that is not an energy performance contract for conservation measures under any other legal authority.

History: En. Sec. 3, Ch. 162, L. 2005; amd. Sec. 6, Ch. 439, L. 2009; amd. Sec. 10, Ch. 344, L. 2015.

90-4-1104. Repealed. Sec. 12, Ch. 344, L. 2015.
History: **En. Sec. 4, Ch. 162, L. 2005; amd. Sec. 7, Ch. 439, L. 2009.**

90-4-1105. Repealed. Sec. 12, Ch. 344, L. 2015.
History: **En. Sec. 5, Ch. 162, L. 2005; amd. Sec. 8, Ch. 439, L. 2009.**

90-4-1106. Repealed. Sec. 12, Ch. 344, L. 2015.
History: **En. Sec. 6, Ch. 162, L. 2005; amd. Sec. 9, Ch. 439, L. 2009.**

90-4-1107. Repealed. Sec. 12, Ch. 344, L. 2015.
History: **En. Sec. 7, Ch. 162, L. 2005; amd. Sec. 10, Ch. 439, L. 2009.**

90-4-1108. Repealed. Sec. 12, Ch. 344, L. 2015.
History: **En. Sec. 8, Ch. 162, L. 2005; amd. Sec. 11, Ch. 439, L. 2009.**

90-4-1109. Contracts and agreements not general obligation of governmental entity. Except as provided in 90-4-1114(1), payment obligations of a governmental entity pursuant to an energy performance contract are not general obligations of the governmental entity and are collectible only from guaranteed cost savings provided in the energy performance contract and other revenue, if any, pledged in the energy performance contract.
History: **En. Sec. 9, Ch. 162, L. 2005; amd. Sec. 12, Ch. 439, L. 2009; amd. Sec. 11, Ch. 344, L. 2015.**

90-4-1110. Duties and authority of department. (1) The department shall establish an energy performance contract program for governmental entities. The department shall:

(a) solicit, evaluate, and maintain a list of qualified energy service providers;

(b) develop a process to disqualify and remove from the list energy service providers who do not comply with qualifications established;

(c) enter into agreements with qualified energy service providers to provide services in accordance with this part;

(d) establish reporting requirements for qualified energy service providers;

(e) develop a model energy performance contract process and documents; and

(f) assist governmental entities interested in pursuing energy performance contracts by providing technical assistance and educational programs and by maintaining a website.

(2) The department may develop recommended best practices for:

(a) evaluating energy performance proposals and awarding energy performance contracts;

(b) measuring and verifying guaranteed cost savings and cost-effectiveness;

(c) identifying a variety of options to determine the amount of project costs to be covered by guaranteed cost savings;

(d) calculating guaranteed cost savings;

(e) measuring energy cost savings and verification;

(f) determining the cost-effectiveness of the energy performance contract when using an unguaranteed utility unit price escalation rate; and

(g) determining an unguaranteed utility unit price escalation rate.

(3) The department may adopt rules for the implementation of this part.
History: **En. Sec. 1, Ch. 344, L. 2015; amd. Sec. 2, Ch. 311, L. 2019.**

90-4-1111. List of qualified energy service providers eligible for energy performance contracts. (1) At least every 5 years, the department shall issue a request for qualifications for energy service providers interested in entering into energy performance contracts with governmental entities. An energy service provider may submit qualifications to the department at any time, and the department shall review the submission for potential inclusion on its list of qualified energy service providers.

(2) The department shall evaluate qualifications for qualified energy service providers on the basis of:

(a) knowledge and experience with:

(i) design, engineering, installation, maintenance, and repairs associated with energy performance contracts;

(ii) conversion to a different fuel source associated with a comprehensive energy efficiency retrofit;

(iii) postinstallation project monitoring, data collection, and reporting of guaranteed cost savings;

(iv) overall project management; and
(v) projects of similar size and scope;
(b) ability to guarantee cost-effectiveness and to access long-term financing;
(c) financial stability; and
(d) other factors determined by the department.

(3) The department shall maintain a list of qualified energy service providers who meet the requirements of subsection (2).

(4) The department shall notify energy service providers who submitted qualifications in accordance with subsection (1) whether they meet the requirements of this part and are qualified energy service providers.

History: **En. Sec. 2, Ch. 344, L. 2015.**

90-4-1112. Selection of qualified energy service providers. (1) Before selecting an energy service provider, a governmental entity shall solicit a request for proposals from a minimum of three qualified energy service providers. The governmental entity may select the qualified energy service provider determined by the governmental entity to best meet the needs of the governmental entity. The qualified energy service provider selected is not required to have submitted the proposal with the lowest cost.

(2) In selecting a qualified energy service provider, a governmental entity shall consider:
(a) experience with:
(i) design, engineering, and installation of cost-saving measures;
(ii) overall project management;
(iii) projects of similar size and scope;
(iv) postinstallation measurement and verification of guaranteed cost savings;
(v) in-state projects and Montana-based subcontractors;
(vi) commissioning of projects;
(vii) training of building operators; and
(viii) conversions to a different fuel source; and
(b) quality of technical approach.

History: **En. Sec. 3, Ch. 344, L. 2015; amd. Sec. 3, Ch. 311, L. 2019.**

90-4-1113. Investment-grade energy audits. (1) The qualified energy service provider selected by a governmental entity in accordance with 90-4-1112 shall prepare an investment-grade energy audit. The audit must be incorporated into an energy performance contract.

(2) An investment-grade energy audit must include estimates of all costs and guaranteed cost savings for the proposed energy performance contract including:
(a) design;
(b) engineering;
(c) equipment;
(d) materials;
(e) installation;
(f) maintenance;
(g) repairs;
(h) monitoring and verification;
(i) commissioning;
(j) training; and
(k) debt service.

(3) (a) A qualified energy service provider and the governmental entity shall agree on the cost of an investment-grade energy audit before it is conducted.

(b) If an investment-grade energy audit is completed and the governmental entity does not execute an energy performance contract, the governmental entity shall pay the full cost of the investment-grade energy audit.

(c) If the governmental entity executes the energy performance contract, the cost of the investment-grade energy audit may be included in the costs of an energy performance contract or, at the discretion of the governmental entity, be paid for by the governmental entity.

History: **En. Sec. 4, Ch. 344, L. 2015; amd. Sec. 4, Ch. 311, L. 2019.**

90-4-1114. Energy performance contracts. (1) A governmental entity may pay for an energy performance contract with:

(a) funds designated for operating costs, capital expenditures, utility costs, or lease payments;

(b) installment payment contracts or lease purchase agreements;

(c) bonds issued in accordance with other bonding provisions as provided by law; or

(d) other financing through a third party, including tax-exempt financing.

(2) Utility incentives, grants, operating costs, capital budgets, or other permissible sources may be used to reduce the amount of financing.

(3) (a) An energy performance contract may extend beyond the fiscal year for which the contract is effective.

(b) An energy performance contract may not exceed 20 years, the cost-weighted average useful life of the cost-saving measure, or the term of financing, whichever is shortest.

(4) During the guarantee period, a qualified energy service provider shall:

(a) measure and verify reductions in energy consumption and costs attributable to cost-saving measures implemented pursuant to an energy performance contract; and

(b) not less than annually, prepare and provide a measurement and verification report to the governmental entity and to the department documenting the performance of cost-saving measures.

(5) (a) Costs for measurement and verification must be included in an energy performance contract and paid by the governmental entity during an initial monitoring period that is not less than 3 years.

(b) The energy performance contract must provide that, if guaranteed cost savings are not achieved during any year in the initial monitoring period, the qualified energy service provider shall pay the costs for measurement and verification reports until guaranteed cost savings are achieved for all years in a term of consecutive years equal to the initial monitoring period.

(6) (a) Except as provided in subsection (6)(b), the qualified energy service provider shall pay the governmental entity the amount of any verified annual guaranteed cost savings shortfall each year until guaranteed cost savings are achieved for all years in an initial monitoring period established in accordance with subsection (5). The amount of cost savings achieved during a year must be determined using the mutually agreed on baseline rates referenced in guaranteed cost savings and any unguaranteed energy cost savings attributable to utility unit price escalation rates.

(b) In the case of a shortfall, the governmental entity and qualified energy service provider may negotiate the terms of measurement and verification reports and the shortfall payment for the remainder of the energy performance contract finance term.

(c) If an excess in guaranteed cost savings in any year of the guarantee period is revealed in a measurement and verification report, the guaranteed cost savings remain with the governmental entity. Guaranteed cost savings may not be used to cover potential shortfalls in subsequent years or actual guaranteed cost savings shortages in previous years of a guarantee period.

History: En. Sec. 5, Ch. 344, L. 2015; amd. Sec. 5, Ch. 311, L. 2019.

Part 12
Montana Clean Renewable Energy Bond Act

90-4-1201. Short title. This part may be cited as the "Montana Clean Renewable Energy Bond Act".

History: En. Sec. 1, Ch. 378, L. 2007.

90-4-1202. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric power other than simple generation, transmission, or distribution. Ancillary services related to transmission services include energy losses, energy imbalances, scheduling and dispatching, load following, system protection, spinning reserves and nonspinning reserves, and reactive power.

(2) "Bond" means bond, note, or other obligation.

(3) "Clean renewable energy bonds" means one or more bonds issued by a governmental body pursuant to section 54 of the Internal Revenue Code, 26 U.S.C. 54, and this part.

(4) "Commission" means the public service commission provided for in 69-1-102.

(5) "Common ownership" means the same or substantially similar persons or entities that maintain a controlling interest in more than one community renewable energy project even if the ownership shares differ between two community renewable energy projects. Two community renewable energy projects may not be considered to be under common ownership simply because the same entity provided debt or equity, or both debt and equity, to both projects.

(6) "Community renewable energy project" means an eligible renewable resource as defined in 90-4-1005 that is interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to 25 megawatts in total calculated nameplate capacity.

(7) "Governing authority" means a council, board, or other body governing the affairs of the governmental body.

(8) "Governmental body" means a city, town, county, school district, consolidated city-county, Indian tribal government, or any other political subdivision of the state, however organized.

(9) "Intermittent generation resource" means a generator that operates on a limited and irregular basis due to the inconsistent nature of its fuel supply, which is primarily wind or solar power.

(10) "Internal Revenue Code" has the meaning provided in 15-30-2101.

(11) "Local owners" means:

(a) Montana residents;

(b) general partnerships of which all partners are Montana residents;

(c) business entities organized under the laws of the state that:

(i) have less than $50 million of gross revenue;

(ii) have less than $100 million of assets; and

(iii) have at least 50% of the equity interests, income interests, and voting interests owned by Montana residents;

(d) Montana nonprofit organizations;

(e) Montana-based tribal councils;

(f) Montana political subdivisions or local governments;

(g) Montana-based cooperatives other than cooperative utilities; or

(h) any combination of the individuals or entities listed in subsections (11)(a) through (11)(g).

(12) "Project" means:

(a) a facility qualifying as a "qualified project" within the meaning of section 54(d)(2) of the Internal Revenue Code, 26 U.S.C. 54(d)(2);

(b) a community renewable energy project as defined in subsection (6); or

(c) an alternative renewable energy source as defined in 15-6-225.

(13) "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the community renewable energy project and other eligible renewable resources that are:

(a) located within 5 miles of the project;

(b) constructed within the same 12-month period; and

(c) under common ownership.

History: En. Sec. 2, Ch. 378, L. 2007; amd. Sec. 4, Ch. 232, L. 2009; amd. Sec. 3, Ch. 542, L. 2021.

90-4-1203. Authority to acquire, construct, and operate projects. A governmental body may:

(1) acquire, construct, reconstruct, extend, or improve a project within or outside of the boundaries of the governmental body or partially within or partially outside the boundaries of the governmental body;

(2) acquire any interest in or any right to capacity of a project and acquire by gift, purchase, or lease land or rights in land or other real or personal property that is necessary for the ownership, operation, or maintenance of a project;

(3) operate and maintain a project to provide electricity for its own use and, to the extent that production is in excess of its own requirements, sell the production to:

(a) a party allowed to choose an electricity supplier under 69-8-201;

(b) a public utility or cooperative;

(c) through June 30, 2009, a public utility under a qualifying contract governed by Title 69, chapter 3, part 6, if:

(i) the commission determines that adequate ancillary services are available for increases in the amount of intermittent generation resources connected to the transmission grid;

(ii) the cost of any ancillary services provided to the generator by the public utility can be adjusted to reflect actual costs, the costs are deductible by the public utility from the price of electricity paid to the generator, and adjustments may be made as frequently as every 12 months; and

(iii) the public utility can refuse acceptance of electricity from the generator when the loss of ancillary services threatens system reliability or the public utility is unable to purchase sufficient ancillary services to meet its obligations, subject to 90 days' written notice to the generator;

(d) a competitive electricity supplier; or

(e) an out-of-state purchaser;

(4) prescribe and collect rates, fees, and charges for the services and facilities furnished by a project;

(5) enter into and perform contracts and agreements that are necessary for the planning, construction, lease, operation, and maintenance of a project and the sale, transmission, distribution, or exchange of the electricity generated from the project on terms and for a period of time that its governing authority may determine;

(6) contract with a person or entity, within or outside the state, for the construction of a project, for the sale or transmission of electricity generated by a project, or for any interest in the project or any right to capacity of the project on terms and conditions that its governing authority may determine.

History: En. Sec. 3, Ch. 378, L. 2007.

90-4-1204. Cooperation among governmental bodies. (1) Two or more governmental bodies through their respective governing authorities may enter into interlocal or joint power agreements in accordance with Title 7, chapter 11, part 1, to facilitate project financing, acquisition, construction, operation, and maintenance and to provide related services including the sale and purchase of electricity.

(2) Governmental bodies that enter into agreements pursuant to subsection (1) may:

(a) authorize a board, commission, or other body to supervise, manage, or operate a project and may prescribe its powers and duties and fix the compensation of the members of the body supervising, managing, or operating the project; or

(b) hire a private party to supervise, manage, and operate the project on behalf of the governmental bodies.

History: En. Sec. 4, Ch. 378, L. 2007.

90-4-1205. Authority to issue revenue bonds. (1) Except as provided in 90-4-1221, a governmental body may:

(a) issue revenue bonds to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, or extension of any project;

(b) pledge to the punctual payment of its revenue bonds issued under this section and interest on the bonds all or a portion of the gross or net revenue of the project; and

(c) create and maintain reasonable reserves.

(2) The revenue bonds provided for in subsection (1) may be authorized by a resolution adopted by the governing authority of the governmental body. The resolution must establish the terms, covenants, and conditions of the revenue bonds. It is not necessary to submit the question of issuing the revenue bonds to the electors of the governmental body. The revenue bonds do not constitute indebtedness for the purpose of statutory debt limitations.

(3) The revenue of the project must include the charges for energy used or reserved for use by the governmental body, which may be made payable from its general fund or other available revenue, and the revenue generated from the sale of energy or capacity to third parties.

History: **En. Sec. 5, Ch. 378, L. 2007.**

90-4-1206. Determination of cost. The governing authority of a governmental body, in determining the cost of a project to be financed by the issuance of revenue bonds pursuant to 90-4-1205, may include:

(1) engineering, inspection, fiscal, and legal expenses;

(2) interest estimated to accrue during the construction period of the project and for up to 6 months after the construction period on borrowed funds; and

(3) costs of issuance of the revenue bonds and the funding of a debt service reserve to secure the revenue bonds.

History: **En. Sec. 6, Ch. 378, L. 2007.**

90-4-1207. Nature of revenue bonds. (1) A holder of a revenue bond issued pursuant to 90-4-1205 does not have the right to compel the governmental body to exercise its taxing power to pay off the bonds or the interest on those bonds.

(2) Each revenue bond issued pursuant to 90-4-1205 must state that:

(a) the bond, including interest on the bond, is payable from the revenue pledged to the payment of the bond; and

(b) the bond does not constitute a debt of the governmental body within the meaning of any constitutional or statutory limitation or provision.

History: **En. Sec. 7, Ch. 378, L. 2007.**

90-4-1208. Authority to issue other bonds. If the principal amount of clean renewable energy bonds, as limited by the Internal Revenue Code, is insufficient to finance all costs of a project as determined pursuant to 90-4-1206, the governmental body may issue bonds to finance those costs and the costs of issuance of those bonds as:

(1) additional revenue bonds pursuant to 90-4-1205;

(2) obligations under 7-7-4104; or

(3) general obligations of a governmental body, provided that the issuance of the bonds are submitted to the electors of the governmental body as required by law.

History: **En. Sec. 8, Ch. 378, L. 2007.**

90-4-1209. Use of revenue from project. (1) A governmental body issuing bonds or entering into a contract pursuant to this part with respect to a project may appropriate, apply, or expend the revenue of the project for the following purposes:

(a) to pay when due all bonds and interest on the bonds or amounts owing under contracts for the payment of the revenue that is or has been pledged, charged, or otherwise encumbered, including reserves;

(b) to provide for all expenses of operation and maintenance of the project, including reserves;

(c) to pay and discharge bonds and interest on the bonds or amounts under contracts not issued or entered into under this part for which the revenue of the project is or has been pledged, charged, or encumbered;

(d) to pay and discharge bonds and interest on the bonds that do not constitute a lien, charge, or encumbrance on the revenue of the project and that have been issued for the purpose of financing the acquisition, purchase, construction, reconstruction, improvement, or extension of the project; and

(e) to provide a reserve for improvements to the project.

(2) A governing authority shall fulfill the requirements of subsection (1) before the governing authority may transfer any of the revenue of the project to its general fund.

History: **En. Sec. 9, Ch. 378, L. 2007.**

90-4-1210. Covenants in resolution of authorizing issuance of bonds. (1) A resolution authorizing the issuance of bonds under this part or a contract entered into under this part may contain covenants as to:

(a) the purpose or purposes to which the proceeds of sale of the bonds or amounts payable under the contract may be applied and the disposition of the proceeds or amounts;

(b) the use and disposition of the revenue of the project, including the creation and maintenance of reserves;

(c) the transfer, from the general fund of the governmental body to the account or accounts of the project, of an amount equal to the cost of furnishing the municipality or any of its departments, boards, or agencies with the services, facilities, or commodities of the project;

(d) the issuance of other bonds or the incurrence of other contractual obligations payable from the revenue of the project;

(e) the operation and maintenance of the project;

(f) the insurance to be carried on the project and the use and disposition of insurance proceeds;

(g) books of account and the inspection and audit of the books; and

(h) the terms and conditions upon which the holders or trustees of the bonds or any portion of the bonds or the contracting party are entitled to the appointment of a receiver by the district court having jurisdiction.

(2) If a receiver is appointed, the receiver may:

(a) enter and take possession of the project;

(b) operate and maintain the project;

(c) prescribe rates, fees, or charges, subject to any required approval of the public service commission; and

(d) collect, receive, and apply all revenue arising from the project in the same manner as the governmental body itself might do.

History: En. Sec. 10, Ch. 378, L. 2007.

90-4-1211 through 90-4-1215 reserved.

90-4-1216. Remedies. The provisions of this part and any resolution or contract are enforceable by a bondholder or contracting party in a court of competent jurisdiction by mandamus or other appropriate suit, action, or proceeding.

History: En. Sec. 11, Ch. 378, L. 2007.

90-4-1217. Presumptions of validity of bonds. (1) Bonds issued under this part bearing the signatures of officers in office on the date of the signing of the bonds are valid and binding obligations even if, before bond delivery and payment, the persons whose signatures appear on the bonds are no longer officers of the governmental body issuing the bonds.

(2) The validity of the bonds is not dependent on or affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, or extension of the project for which the bonds are issued.

(3) The resolution authorizing the bonds may provide that the bonds must contain a recital that they are issued pursuant to this part and that the recital is conclusive evidence of the bonds' validity and of the regularity of the bonds' issuance.

History: En. Sec. 12, Ch. 378, L. 2007.

90-4-1218. Liens arising from bonds or contracts — mortgages. (1) A resolution or contract must specify and define the revenue or portion of the revenue that is appropriated and pledged for the security and payment of the bonds or amounts payable under the contract and the relative security of liens on the revenue in favor of bonds of one or more series or issues, whether issued concurrently or at different times, or in favor of different contracts, whether entered into concurrently or at different times.

(2) A governmental body may mortgage, pledge, and assign any or all of the real and personal property comprising a project to secure payment of bonds, contracts, or other obligations issued or incurred under this part.

History: En. Sec. 13, Ch. 378, L. 2007.

90-4-1219. Sale of bonds. Bonds issued under this part may be incurred or sold at public or private sale on terms and at prices that the governing authority determines to be advantageous.

History: En. Sec. 14, Ch. 378, L. 2007.

90-4-1220. Interim receipts or certificates. Pending the preparation of the definitive bonds, interim receipts or certificates, in a form and with provisions as the governing authority may determine, may be issued to the purchaser or purchasers of bonds sold pursuant to this part. The bonds and interim receipts or certificates are fully negotiable as provided in the Uniform Commercial Code.

History: **En. Sec. 15, Ch. 378, L. 2007.**

90-4-1221. Requirements prior to project construction. Prior to starting construction under this part, the governmental body shall enter into a contract or contracts:

(1) with a transmission services provider to interconnect with the transmission or distribution facilities of a utility or cooperative;

(2) that ensure that all ancillary services as required by the control area operator are available to regulate the generation of electricity from the project;

(3) for the sale of electricity from the project; and

(4) with a tribal government for projects being constructed within the exterior boundaries of that tribal government's Indian reservation.

History: **En. Sec. 16, Ch. 378, L. 2007.**

90-4-1222. Prohibition on construction, ownership, and operation of powerlines. (1) This part does not authorize a governmental body to:

(a) construct, own, or operate electricity distribution or transmission facilities; or

(b) use the proceeds from bonds under this part to construct, own, or operate electricity distribution or transmission facilities.

(2) Subsections (1)(a) and (1)(b) do not apply to electrical lines connecting component parts within the perimeter of an electric generation facility or to a dedicated tie line between an electric generation facility and the transmission grid or the point of use by the governmental body.

History: **En. Sec. 17, Ch. 378, L. 2007.**

90-4-1223. Interpretation. (1) The powers conferred in this part are in addition and supplemental to the powers conferred by any other general, special, or local law.

(2) If the provisions of this part are inconsistent with the provisions of any other general, special, or local law, the provisions of this part are controlling.

History: **En. Sec. 18, Ch. 378, L. 2007.**

Part 13

Commercial Property-Assessed Capital Enhancements Act

90-4-1301. Short title. This part may be cited as the "Commercial Property-Assessed Capital Enhancements Act of Montana".

History: **En. Sec. 1, Ch. 444, L. 2021.**

90-4-1302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Authority" means the Montana facility finance authority created in 2-15-1815.

(2) "Commercial property-assessed capital enhancements program" or "program" means a program established in accordance with this part.

(3) "District" means a district that is established under this part by a local government and that lies within the local government's jurisdictional boundaries. A local government may create more than one district under a program.

(4) "Energy conservation measure" means a permanent cost-effective energy improvement fixed to real property, including new construction, and intended to decrease energy or water consumption and demand, including a product, device, or interacting group of products or devices on the customer's side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature. The term includes but is not limited to:

(a) insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems;

(b) storm windows and doors, including multiglazed windows and doors, heat-absorbing or heat-reflective glazed windows, coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;

(c) automated energy control systems;

(d) heating, ventilating, or air-conditioning and distribution system modifications or replacements;

(e) caulking, weather-stripping, or air sealing;

(f) replacement or modification of lighting fixtures to reduce the energy use of the lighting system;

(g) energy recovery systems;

(h) daylighting systems;

(i) installation or upgrades of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity;

(j) fuel source changes that result in cost savings;

(k) measures to reduce the usage of water or to increase the efficiency of water usage; and

(l) any other installation or modification of equipment, devices, or materials approved as a utility cost-saving measure by the governing body.

(5) "Energy conservation project" means the installation or modification of an energy conservation measure or the acquisition, installation, or improvement of a renewable energy system.

(6) "Governing body" means the legislative authority of a local government.

(7) "Local government" means a county, city, town, or a consolidated city-county.

(8) "Multifamily housing facility" means a property with at least five units that are primarily intended for residential use, each with a full bathroom and a complete kitchen. The units may be rental units or owner-occupied units. The units may be attached, detached, semidetached, or row houses.

(9) (a) "Person" means an individual, firm, partnership, association, corporation, unincorporated joint venture, or trust that is organized, permitted, or existing under the laws of this state or any other state, including a federal corporation, or a combination of individuals, firms, partnerships, associations, corporations, unincorporated joint ventures, or trusts.

(b) The term does not include a local government.

(10) "Public safety and resiliency improvement" means one or more fixed installations or modifications to eligible commercial real property that are designed to improve a property's public safety or resiliency by improving the eligible real property's:

(a) structural integrity for seismic events;

(b) indoor air quality;

(c) durability to resist wind, fire, and flooding;

(d) ability to withstand an electric power outage;

(e) stormwater control measures, including structural and nonstructural measures to mitigate stormwater runoff; and

(f) firearm storage infrastructure for use by the public pursuant to a firearm hold agreement as provided in 27-1-748.

(11) "Public safety and resiliency improvement project" means the installation or modification of a public safety and resiliency improvement.

(12) "Real property" means a privately owned commercial or industrial facility, multifamily housing facility, or agricultural property.

(13) "Record owner" means the person or persons possessing the most recent fee title as shown by the records of the county clerk and recorder.

(14) "Renewable energy" has the meaning provided in 15-24-3102.

(15) "Renewable energy system" means a fixture, product, device, or interacting group of fixtures, products, or devices on the customer's side of the meter that uses one or more forms of renewable energy to generate electricity or to reduce the use of nonrenewable energy. The term includes a biomass stove but does not include an incinerator or a digester.

History: **En. Sec. 2, Ch. 444, L. 2021; amd. Sec. 1, Ch. 84, L. 2025; amd. Sec. 1, Ch. 406, L. 2025.**

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 1, Ch. 84, L. 2025. Amendment effective April 7, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 406, L. 2025. Amendment effective October 1, 2025.

90-4-1303. Duties of authority related to community property-assessed capital enhancements program — rulemaking. (1) As resources allow, the authority shall provide administrative support to local governments for the administration of the commercial property-assessed capital enhancements program and establish a plan in accordance with 90-4-1305.

(2) If the authority adopts rules in accordance with 90-7-202 to administer the commercial property-assessed capital enhancements program, the authority shall consult with local and county governments and the commercial lending industry, including bank and credit union representatives, on the content of the rules.

(3) The authority shall provide a report to the legislature in accordance with 5-11-210 describing the fees related to the program, administrative costs, the number of properties that are part of a commercial property-assessed capital enhancements program, and the scope of projects in the program:

(a) in 2024; and

(b) every 5 years after the report is initially provided in subsection (3)(a).

History: En. Sec. 3, Ch. 444, L. 2021.

90-4-1304. Program authorized — contracts. (1) In accordance with 90-4-1305 and 90-4-1306, a governing body may establish a commercial property-assessed capital enhancements program and may create a district or districts under the program.

(2) (a) The governing body may enter into a contract with a record owner of real property within a district to finance one or more energy conservation projects or public safety and resiliency improvement projects on the real property included in a district in accordance with this part.

(b) The contract may provide for the repayment of the cost of an energy conservation project or public safety and resiliency improvement project through an assessment in accordance with 90-4-1307 on real property. The financing to be repaid through assessments must be provided by a third party.

(c) Financing may include the cost of materials and labor necessary for the installation or modification of energy conservation projects or public safety and resiliency improvement projects, permit fees, inspection fees, application and administrative fees, bank fees, and all other fees incurred by the record owner for the energy conservation project or public safety and resiliency improvement project on a specific or pro rata basis, as determined by the governing body.

History: En. Sec. 4, Ch. 444, L. 2021; amd. Sec. 2, Ch. 406, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 406, L. 2025. Amendment effective October 1, 2025.

90-4-1305. Elements of program plan — contract requirements. (1) Prior to establishing a program in accordance with 90-4-1306, the authority shall prepare a program plan. Subject to subsections (2) through (4), the program plan must include:

(a) provisions for marketing the program and providing participant education;

(b) the types of energy conservation projects or public safety and resiliency improvement projects that may be financed under the program;

(c) options for raising capital to finance energy conservation projects or public safety and resiliency improvement projects under the program. Options may include but are not limited to owner-arranged financing from a commercial lender. If owner-arranged financing is used, the governing body may impose an assessment pursuant to 90-4-1307 and make payments to the authority, and the authority will distribute those payments to the commercial lender.

(d) quality assurances and antifraud measures;

(e) minimum requirements for a contractor to complete an energy conservation project or public safety and resiliency improvement project;

(f) clearly defined work standards for contractors;

(g) contractor management systems and procedures designed to monitor contractor performance and to manage, track, and resolve consumer complaints; and

(h) a description of the proposed financial arrangement and contract terms between the local government and record owners pursuant to subsection (3).

(2) (a) A program plan for energy conservation projects must include an energy analysis completed by a third party to determine cost and energy savings.

(b) Energy savings calculations and analysis completed in accordance with subsection (2)(a) must be completed by a licensed or certified building professional approved by the authority.

(c) When an energy conservation project is completed, the contractor who completed the project shall submit written verification to the authority that the energy conservation project was properly installed and is operating as intended.

(3) A proposed financial arrangement must be included in a program plan in accordance with subsection (1)(c) and must include:

(a) application, administration, or other program fees that will be charged to record owners participating in the program that will be used to finance costs incurred by the authority, local government, or both as a result of the program;

(b) a requirement that a contract between the governing body and a record owner is invalid and unenforceable unless the holder of a mortgage, trust indenture beneficiary, or loan servicer provides the governing body with each of the following:

(i) an executed subordination agreement, properly notarized and executed within 3 months prior to the application for a contract;

(ii) a record of the subordination agreement from the office of the county clerk and recorder in the county where the property is located; and

(iii) a secretary's certificate or substantially similar certification that the person who executed the subordination agreement is authorized to sign such an agreement on behalf of the mortgage holder, trust indenture beneficiary, or loan servicer; and

(c) a model contract between a governing body and a record owner containing the terms and conditions of financing and an assessment that meets the requirements of 90-4-1307 under the program. The model contract must include full disclosure of costs, including the effective interest rate of the assessment in accordance with 90-4-1307, any administrator fees, the estimated payment schedule, and the placement of a lien on the real property.

(4) (a) Prior to a local government and a record owner for a commercial property-assessed capital enhancements project entering into a contract under a program established pursuant to 90-4-1306, the authority shall obtain independent verification from the record owner that the record owner understands and accepts the terms of the contract and shall make the verification available to the local government.

(b) The contract must allow the record owner to cancel the contract within 3 business days of signing the contract.

(c) The contract must include full disclosure that by entering into the contract, the record owner may incur a property tax lien on the real property included under the contract.

(5) The contract must include requirements that contractors and any subcontractors use a skilled and trained workforce. Contracts signed must require contractors and subcontractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the projects, if the Montana residents have substantially equal qualifications to those of nonresidents.

History: En. Sec. 5, Ch. 444, L. 2021; amd. Sec. 3, Ch. 406, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 406, L. 2025. Amendment effective October 1, 2025.

90-4-1306. Establishment of program. (1) To establish a commercial property-assessed capital enhancements program, a governing body shall:

(a) adopt a resolution of intent that includes:

(i) a statement of intent to establish a commercial property-assessed capital enhancements program describing the role of the governing body and the role of the authority in administering the program;

(ii) the types of energy conservation projects or public safety and resiliency improvement projects that may be included in the program;

(iii) a reference to the program plan required by 90-4-1305 and a location where the plan is available for public inspection; and

(iv) the time and place for a public hearing on the proposed program;

(b) hold a public hearing at which the public may comment on the proposed program and the program plan required by 90-4-1305; and

(c) adopt a resolution establishing the program and setting the terms and conditions of the program, including:

(i) how the governing body will meet the program plan requirements established by the authority in 90-4-1305. To meet the requirement of this subsection (1)(c)(i), the resolution may incorporate a program plan or an amended version of a program plan by reference.

(ii) a description of the aspects of the program that may be changed without a public hearing and the aspects that may be changed only after a public hearing;

(iii) identification of an official authorized to enter into a program contract on behalf of the program with entities providing funding for the program; and

(iv) identification of an official authorized to enter into a program contract on behalf of the governing body with record owners.

(2) A commercial property-assessed capital enhancements program may be changed by resolution of the governing body. Adoption of the resolution must be preceded by a public hearing if required pursuant to subsection (1)(c)(ii).

History: En. Sec. 6, Ch. 444, L. 2021; amd. Sec. 4, Ch. 406, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 406, L. 2025. Amendment effective October 1, 2025.

90-4-1307. Assessments. (1) (a) A local government may impose an assessment under a commercial property-assessed capital enhancements program pursuant to a written contract with the record owner of the real property to be assessed.

(b) The term of the assessment may not exceed the useful life of an energy conservation project or public safety and resiliency improvement project paid for by the assessment.

(2) Before entering into a contract with a record owner under a program, the local government shall verify that:

(a) delinquent taxes, special assessments, or water or sewer charges are not due on the real property; and

(b) delinquent assessments on the real property under a commercial property-assessed capital enhancements program are not due.

(3) (a) An assessment imposed under a commercial property-assessed capital enhancements program, including any interest on the assessment and any penalty, constitutes a program lien against the real property on which the assessment is imposed from the date of the assessment until the assessment, including any interest or penalty, is paid in full. The lien is for outstanding assessments only, runs with the real property, and has the same priority and status as other property tax and assessment liens.

(b) A governing body has the same rights in the case of delinquency in the payment of an assessment as it does with respect to delinquent property taxes. When the assessment, including any interest and penalty, is paid, the lien must be removed from the real property.

(4) (a) Except as provided in subsection (4)(b), installments of assessments due under a program must be included in each tax bill issued under 15-16-101 and must be collected at the same time and in the same manner as taxes collected under Title 15, chapter 16.

(b) Installments may be billed and collected as provided in a special assessment ordinance of general applicability adopted by a local government.

History: En. Sec. 7, Ch. 444, L. 2021; amd. Sec. 5, Ch. 406, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 406, L. 2025. Amendment effective October 1, 2025.

90-4-1308. Joint programs. (1) A local government may join with another local government or with any person by contract or otherwise to implement a commercial property-assessed capital enhancements program in whole or in part.

(2) If a commercial property-assessed capital enhancements program is implemented jointly by two or more local governments, a single public hearing held jointly by the local governments meets the requirements of 90-4-1306.

History: En. Sec. 8, Ch. 444, L. 2021.

CHAPTER 5
SECONDARY INDUSTRY AND COMMERCIAL DEVELOPMENT

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Chapter Cross-References

County culture, social services, and recreation, Title 7, ch. 16.
Business incubator tax exemption, Title 15, ch. 24, part 18.
Coal tax to alternative energy research and renewable resource development, 15-35-108.
State construction contracts, Title 18, ch. 2.
Writs — mandamus, Title 27, ch. 26, part 2.
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Eminent domain, Title 70, ch. 30.
Mortgages, Title 71, ch. 1.
Montana Major Facility Siting Act, Title 75, ch. 20.
Department of Natural Resources and Conservation — duties of development, protection, and conservation of forest, range, and water resources, 76-13-104.
Development of state land resources, Title 77, ch. 1, part 6.
Oil and gas development, Title 77, ch. 3, part 4.
Development of renewable resources on state lands, Title 77, ch. 4.
Water resource development, Title 85, ch. 1.

Part 1
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Part Cross-References

Laws to protect, enhance, and develop all agriculture, Art. XII, sec. 1(1), Mont. Const.
Business improvement districts, Title 7, ch. 12, part 11.
Agricultural experiment station and research centers, 20-25-222.
Experimental farms, 20-25-225.
Development of outdoor recreational resources, Title 23, ch. 2, part 1.
Montana development corporation, 32-4-102.
Agricultural cooperatives, Title 35, ch. 16.
Cooperative marketing, Title 35, ch. 17.
Federal and state aid for airport development, 67-10-405.
Airport development — municipal and regional airport authorities, Title 67, ch. 11.

90-5-101. *(Temporary)* **Definitions.** As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Agricultural enterprises" includes but is not limited to producing, warehousing, storing, fattening, treating, handling, distributing, or selling farm products or livestock.

(2) "Bonds" means bonds, refunding bonds, notes, or other obligations issued by a municipality or county under the authority of this part, including without limitation short-term bonds or notes issued in anticipation of the issuance of long-term bonds or notes.

(3) "Electric energy generation facility" means any combination of a physically connected generator or generators, associated prime movers, and other associated property and transmission facilities and upgrades and improvements of transmission facilities, including appurtenant land and improvements and personal property, that are normally operated together to produce and transfer electric power. The term includes but is not limited to generating facilities that produce and transfer electricity from coal-fired steam turbines, oil or gas turbines, wind turbines, solar power sources, fuel cells, or turbine generators that are driven by falling water.

(4) "Family services provider" means organizations, including nonprofit corporations, that provide human services for children and adults, including but not limited to early care services for children, youth services, health services, social services, habilitative services, rehabilitative services, preventive care, and supportive services, and training, educational, and referral activities in support of human services.

(5) "Governing body" means the board or body in which the general legislative powers of the municipality or county are vested.

(6) "Higher education facilities" means any real or personal properties required or useful for the operation of an institution of higher education.

(7) "Institution of higher education" means any private, nonprofit corporation or institution within the state of Montana:

(a) authorized to provide or operate educational facilities; and

(b) providing a program of education beyond the high school level.

(8) "Mortgage" means a mortgage or deed of trust or other security device.

(9) "Municipality" means any incorporated city or town in the state.

(10) "Project" means:

(a) any land, any building or other improvement, and any other real or personal property considered necessary or related to the improvement, whether or not now in existence, that must be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises;

(b) recreation or tourist facilities;

(c) local, state, and federal governmental facilities;

(d) multifamily housing, hospitals, long-term care facilities, community-based facilities for individuals who are persons with developmental disabilities as defined in 53-20-102, or medical facilities;

(e) higher education facilities;

(f) electric energy generation facilities;

(g) family services provider facilities;

(h) any facilities that are used or considered necessary to create or produce any intangible item, as defined in section 197(d)(1)(C)(iii) of the Internal Revenue Code, 26 U.S.C. 197(d)(1)(C)(iii), including any patent, copyright, formula, process, design, pattern, knowledge, format, or other similar intangible item;

(i) the production of energy using an alternative renewable energy source as defined in 15-6-225;

(j) a facility owned, used, or supported by an entity organized under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3); and

(k) any combination of projects in subsections (10)(a) through (10)(j).

90-5-101. *(Effective January 1, 2028)* **Definitions.** As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Agricultural enterprises" includes but is not limited to producing, warehousing, storing, fattening, treating, handling, distributing, or selling farm products or livestock.

(2) "Bonds" means bonds, refunding bonds, notes, or other obligations issued by a municipality or county under the authority of this part, including without limitation short-term bonds or notes issued in anticipation of the issuance of long-term bonds or notes.

(3) "Electric energy generation facility" means any combination of a physically connected generator or generators, associated prime movers, and other associated property and transmission facilities and upgrades and improvements of transmission facilities, including appurtenant land and improvements and personal property, that are normally operated together to produce and transfer electric power. The term includes but is not limited to generating facilities that produce and transfer electricity from coal-fired steam turbines, oil or gas turbines, wind turbines, solar power sources, fuel cells, or turbine generators that are driven by falling water.

(4) "Family services provider" means organizations, including nonprofit corporations, that provide human services for children and adults, including but not limited to early care services for children, youth services, health services, social services, habilitative services, rehabilitative services, preventive care, and supportive services, and training, educational, and referral activities in support of human services.

(5) "Governing body" means the board or body in which the general legislative powers of the municipality or county are vested.

(6) "Higher education facilities" means any real or personal properties required or useful for the operation of an institution of higher education.

(7) "Institution of higher education" means any private, nonprofit corporation or institution within the state of Montana:

(a) authorized to provide or operate educational facilities; and

(b) providing a program of education beyond the high school level.

(8) "Mortgage" means a mortgage or deed of trust or other security device.

(9) "Municipality" means any incorporated city or town in the state.

(10) "Project" means:

(a) any land, any building or other improvement, and any other real or personal property considered necessary or related to the improvement, whether or not now in existence, that must be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises;

(b) recreation or tourist facilities;

(c) local, state, and federal governmental facilities;

(d) multifamily housing, hospitals, long-term care facilities, community-based facilities for individuals who are persons with developmental disabilities as defined in 53-20-102, or medical facilities;

(e) higher education facilities;

(f) electric energy generation facilities;

(g) family services provider facilities;

(h) any facilities that are used or considered necessary to create or produce any intangible item, as defined in section 197(d)(1)(C)(iii) of the Internal Revenue Code, 26 U.S.C. 197(d)(1)(C)(iii), including any patent, copyright, formula, process, design, pattern, knowledge, format, or other similar intangible item;

(i) the production of energy using an alternative renewable energy source as defined in 15-6-225;

(j) a facility owned, used, or supported by an entity organized under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3);

(k) providing broadband service exclusively to unserved areas and underserved areas as defined in 90-1-602 or to locations where broadband is available only by satellite technologies; and

(l) any combination of projects in subsections (10)(a) through (10(k).

History: **En. Sec. 1, Ch. 51, L. 1965; amd. Sec. 1, Ch. 50, L. 1969; amd. Sec. 1, Ch. 386, L. 1971; amd. Sec. 1, Ch. 234, L. 1975; amd. Sec. 1, Ch. 374, L. 1975; R.C.M. 1947, 11-4101; amd. Sec. 1, Ch. 656, L. 1979; amd. Sec. 1, Ch. 318, L. 1981; amd. Sec. 1, Ch. 376, L. 1981; amd. Sec. 1, Ch. 4, Sp. L. March 1986; amd. Sec. 1, Ch. 254, L. 1993; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 1, Ch. 353, L. 2001; amd. Sec. 4, Ch. 541, L. 2001; amd. Sec. 25, Ch. 591, L. 2001; amd. Sec. 12, Ch. 405, L. 2003; amd. Sec. 47, Ch. 489, L. 2009; amd. Sec. 1, Ch. 158, L. 2025; amd. Sec. 1, Ch. 334, L. 2025.**

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 1, Ch. 158, L. 2025. Amendment effective April 16, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 334, L. 2025. Amendment effective January 1, 2028.

Cross-References

Laws to protect, enhance, and develop all agriculture, Art. XII, sec. 1(1), Mont. Const.
Rate of interest on bonds to be determined by governing bodies, 17-5-102.
Development of outdoor recreational resources, Title 23, ch. 2, part 1.
Montana development corporation, 32-4-102.
Agricultural cooperatives, Title 35, ch. 16.
Cooperative marketing, Title 35, ch. 17.
Montana Major Facility Siting Act, Title 75, ch. 20.
Development of state land resources, Title 77, ch. 1, part 6.
Oil and gas development, Title 77, ch. 3, part 4.
Development of renewable resources on state lands, Title 77, ch. 4.
Water resource development, Title 85, ch. 1.

90-5-102. General municipal and county powers. (1) In addition to any other powers which it may now have, each municipality and each county may:

(a) acquire, by construction, purchase, devise, gift, or lease or any combination of such methods, one or more projects located within this state. The projects may be located within, without, or partially within and partially without the municipality or county.

(b) lease to others any or all of its projects for such rentals and upon such terms and conditions, consistent with the provisions of this part, as the governing body considers advisable;

(c) enter into agreements, upon terms the governing body considers advisable and not in conflict with the provisions of this part, to loan the proceeds of its revenue bonds to others for the purpose of defraying the cost of acquiring or improving any project;

(d) issue revenue bonds for the purpose of defraying the cost of acquiring or improving any project or projects and secure the payment of such bonds as provided in this part. The revenue bonds may be issued in two or more series or issues where considered advisable, and each such series or issue may contain different maturity dates, interest rates, priorities on revenues available for payment of the bonds, priorities on securities available for guaranteeing payment thereof, and such other differing terms and conditions as are considered necessary and are not in conflict with the provisions of this part; and

(e) sell and convey any real or personal property acquired as provided by subsection (1)(a) of this section and make any order respecting it as may be conducive to the best interest of the municipality or county, provided that such sale or conveyance shall be subject to the terms of any lease but shall be free and clear of any other encumbrance.

(2) No municipality or county may operate any project financed by the sale of revenue bonds as a business or in any manner except as the lessor thereof. No municipality or county may acquire any such project or any part thereof by condemnation.

History: En. Sec. 2, Ch. 51, L. 1965; R.C.M. 1947, 11-4102; amd. Sec. 3, Ch. 51, L. 1979; amd. Sec. 2, Ch. 656, L. 1979.

Cross-References

Local government — debt management, Title 7, ch. 7.
Functions of Department of Commerce — economic development, 90-1-105.
Powers cumulative, 90-5-111.
Advice and information by Department of Commerce, 90-5-113.

90-5-103. Limited obligation bonds — form and contents — sale — negotiability — filing. (1) All bonds issued by a municipality or county under the authority of this part must be limited obligations of the municipality or county. Bonds and interest coupons issued under the authority of this part may not constitute or give rise to a pecuniary liability of the municipality or county or a charge against its general credit or taxing powers. This limitation must be plainly stated upon the face of each of the bonds.

(2) The bonds referred to in subsection (1) may be executed and delivered at any time and from time to time, be in form and denominations, be of tenor, be in registered or bearer form either as to principal or interest, or both, be payable in installments and at a time or times not exceeding 40 years from the bonds date, be payable at a place or places, bear interest at a rate or rates, be evidenced in a manner, be redeemable prior to maturity, with or without premium, and contain provisions not inconsistent with this part as considered in the best interest of the municipality or county and provided for in the proceedings of the governing body under whose authority the bonds must be authorized to be issued.

(3) Any bonds issued under the authority of this part may be sold at public or private sale in a manner, at a time or times, and at a price above or below par as may be agreed upon

by the lessee of the project or the borrower of the funds. The municipality or county may pay all expenses, premiums, and commissions that the governing body may consider necessary or advantageous in connection with the authorization, sale, and issuance of the bonds from the proceeds of the sale of the bonds or from the revenue of the projects.

(4) All bonds issued under the authority of this part and all interest coupons applicable to the bonds must be construed to be negotiable instruments despite the fact that they are payable solely from a specified source.

(5) All bonds issued under the authority of this part must be filed with the securities commissioner within 10 days of the date of their issue. The filing must include the name of the issuing authority, the name and address of the person or entity on whose behalf the bonds are issued, the amount of the bond issue, the date of the bond issue, and any other information that the securities commissioner may request. Failure to comply with this section does not affect the validity of the bond issue.

(6) If applicable, the governing body of the municipality or county shall specify whether the bonds are tax credit bonds as provided in 17-5-117, recovery zone economic development bonds or recovery zone facility bonds as provided in 7-7-140, or qualified energy conservation bonds as provided in 7-7-141.

History: (1) thru (4)En. Sec. 3, Ch. 51, L. 1965; amd. Sec. 1, Ch. 304, L. 1974; R.C.M. 1947, 11-4103(1) thru (4); amd. Sec. 3, Ch. 656, L. 1979; (5)En. Sec. 1, Ch. 167, L. 1981; amd. Sec. 50, Ch. 423, L. 1995; amd. Sec. 48, Ch. 489, L. 2009.

Cross-References

Local government — debt management, Title 7, ch. 7.
Negotiable instruments, Title 30, ch. 3.
Use of proceeds of bond sales, 90-5-108.

90-5-104. Hearing. (1) Prior to the issuance of any bonds under the authority of this part by any municipality or county to pay the costs of acquiring or improving a project, the governing body shall give notice and hold a public hearing on the proposed project. At least once a week for 3 consecutive weeks prior to the date set for the hearing, the governing body shall publish in a newspaper of general circulation in the municipality or county a notice of the time and place of the hearing, the general nature of the project, the name of the lessee, borrower, or user of the project, and the estimated cost of the project. The governing body may not issue the bonds to pay the costs of acquiring or improving a project unless it appears after the public hearing that the acquisition or improvement of the project is in the public interest of the municipality or county.

(2) The provisions of subsection (1) do not apply to refunding bonds issued under 90-5-107 to refund bonds issued to pay the costs of acquiring or improving a project as to which a hearing was held under subsection (1).

History: En. Sec. 3, Ch. 51, L. 1965; amd. Sec. 1, Ch. 304, L. 1974; R.C.M. 1947, 11-4103(5); amd. Sec. 4, Ch. 656, L. 1979; amd. Sec. 2, Ch. 376, L. 1981.

Cross-References

Notice — actual and constructive, 1-1-217.
Notice and opportunity to be heard, Title 2, ch. 3, part 1.
General municipal and county powers, 90-5-102.

90-5-105. Provisions for security of bondholders. (1) The payment of the principal of and interest on any bonds issued under the authority of this part shall be secured by a pledge of the revenues out of which such bonds shall be made payable.

(2) The principal of and interest on any bonds issued under the authority of this part may be secured by:

(a) a mortgage covering all or any part of the project;

(b) a pledge of the lease or loan agreement relating to such project; or

(c) such other security device as may be deemed most advantageous by the issuing authority.

(3) (a) The proceedings under which the bonds are authorized to be issued under the provisions of this part and any mortgage given to secure the same, including a mortgage given by the borrower or lessee, may contain any agreements and provisions customarily contained in instruments securing bonds, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of this part, including, without limiting the generality of the foregoing, provisions respecting the:

(i) fixing and collection of rents or payments under any lease or loan agreement concerning the project covered by such proceedings or mortgage;

(ii) terms to be incorporated in the lease or loan agreement;

(iii) maintenance and insurance of such project;

(iv) creation and maintenance of special funds from the revenues of such project; and

(v) rights and remedies available in the event of a default to the bondholders or to the trustee under a mortgage.

(b) In making any such agreements or provisions, a municipality or county shall not have the power to obligate itself except with respect to the project and the application of the revenues therefrom and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

(4) The proceedings authorizing any bonds under the provisions of this part and any mortgage, including a mortgage given by the lessee or borrower, securing such bonds may provide that in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the project in accordance with such proceedings or the provisions of such mortgage.

(5) Any mortgage made by the municipality or county or by the lessee or borrower to secure these bonds may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and the project sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor. No breach of any such agreement shall impose any pecuniary liability upon a municipality or county or any charge upon their general credit or against their taxing powers.

History: En. Sec. 4, Ch. 51, L. 1965; R.C.M. 1947, 11-4104; amd. Sec. 5, Ch. 656, L. 1979.

Cross-References

Bond Validating Act, Title 17, ch. 5, part 2.
Writs — mandamus, Title 27, ch. 26.
Negotiable instruments, Title 30, ch. 3.
Pledges, 71-2-101.
Mortgages, Title 71, ch. 1.
Cost of projects, 90-5-109.

90-5-106. Determination of costs — terms of lease. (1) Prior to the leasing of any project or entering into a loan agreement concerning a project, the governing body must determine and find the following:

(a) the amount necessary to pay the principal of and the interest on the bonds proposed to be issued to finance such project;

(b) the amount necessary to be paid into any reserve funds which the governing body may deem it advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project including taxes; and

(c) the estimated cost of maintaining the project in good repair and keeping it properly insured, unless the terms of the lease or loan agreement provide that the lessee or borrower shall maintain the project and carry all proper insurance with respect thereto.

(2) The determinations and findings of the governing body required to be made by subsection (1) shall be set forth in the proceedings under which the proposed bonds are to be issued. Prior to the issuance of any bonds authorized by this part, the municipality or county shall lease the project to a lessee or lessees or enter into a loan agreement with a borrower under a lease or loan agreement conditioned upon completion of the project by the lessees or borrowers and providing for payment to the municipality or county of such rentals or payments as, upon the basis of such determinations and findings, will be sufficient to:

(a) pay the principal of and interest on the bonds issued to finance the project;

(b) pay the taxes on the project;

(c) build up and maintain any reserves deemed by the governing body to be advisable in connection therewith; and

(d) pay the costs of maintaining the project in good repair and keeping it properly insured, unless the lease or loan agreement obligates the lessees or borrowers to pay for the maintenance and insurance of the project.

(3) Subject to the limitations of this part, the lease, loan agreement, or extensions or modifications thereof may contain such other terms and conditions as may be mutually acceptable to the parties and, notwithstanding any other provisions of law relating to the sale of property owned by municipalities and counties, an option may be granted to a lessee to purchase the project on such terms and conditions as may be mutually acceptable to the parties.

History: **En. Sec. 5, Ch. 51, L. 1965; R.C.M. 1947, 11-4105; amd. Sec. 6, Ch. 656, L. 1979.**

Cross-References

Cost of projects, 90-5-109.

90-5-107. Refunding of bonds. (1) Any bonds issued under the provisions of this part and at any time outstanding, including, without limitation, short-term bonds issued in anticipation of the issuance of long-term bonds, may at any time and from time to time be refunded by a municipality or county by the issuance of its refunding bonds in such amount as the governing body may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be so refunded, together with any interest thereon and any premiums and commissions necessary to be paid in connection therewith. An issue of refunding bonds may be combined with an issue of additional revenue bonds on any project when the combined total meets the requirements of 90-5-106(1).

(2) Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby or by exchange of the refunding bonds for the bonds to be refunded thereby. The holders of any bonds to be so refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable by maturity date, option to redeem, or otherwise, or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption by option or otherwise. Any refunding bonds issued under the authority of this part shall be subject to the provisions contained in 90-5-103 and may be secured in accordance with the provisions of 90-5-105.

(3) The principal proceeds from the sale of any refunding bonds may be applied only as follows, either:

(a) to the immediate payment and retirement of the bonds being refunded; or

(b) to the extent not required for the immediate payment of the bonds being refunded, such proceeds shall be deposited in trust to provide for the payment and retirement of the bonds being refunded and to pay any expenses incurred in connection with such refunding, except that provision may be made for the pledging and disposition of any surplus, including, without limitation, to the payment of the principal of and interest on any issue or series of refunding bonds.

(4) Money in a trust fund under subsection (3) may be invested in direct obligations of the United States government, obligations the principal of and interest on which are guaranteed by the United States government, or obligations of any agency or instrumentality of the United States government.

(5) Nothing in this section may be construed as a limitation on the duration of any deposit in trust for the retirement of bonds being refunded but that have not matured and that are not presently redeemable or, if presently redeemable, have not been called for redemption.

History: **En. Sec. 6, Ch. 51, L. 1965; R.C.M. 1947, 11-4106; amd. Sec. 3, Ch. 376, L. 1981.**

Cross-References

Refunding bonds, Title 17, ch. 5, part 3.

90-5-108. Use of proceeds of bond sales. (1) The proceeds from the sale of bonds issued under authority of this part must be applied only for the purpose for which the bonds were issued or to discharge any existing indebtedness secured by a lien against a hospital or long-term care facility or higher education facility leased or owned by a nonprofit corporation or against a family services provider facility. However, if the project is not a hospital or long-term care facility or higher education facility leased or owned by a nonprofit corporation or a family services provider facility, the proceeds from the sale of bonds may not be used to discharge indebtedness without an improvement to the project.

(2) Any accrued interest and premium received in the sale of bonds must be applied to the payment of the principal of or the interest on the bonds sold. If for any reason any portion of the proceeds is not needed for the purpose for which the bonds were issued, then the unneeded portion of the proceeds must be applied to the payment of the principal of or the interest on the bonds.

History: En. Sec. 7, Ch. 51, L. 1965; amd. Sec. 2, Ch. 234, L. 1975; R.C.M. 1947, 11-4107(part); amd. Sec. 7, Ch. 656, L. 1979; amd. Sec. 2, Ch. 4, Sp. L. March 1986; amd. Sec. 2, Ch. 353, L. 2001.

Cross-References

Limited obligation bonds — form and contents — sale — negotiability, 90-5-103.

90-5-109. Cost of projects. The cost of acquiring or improving any project shall be deemed to include the following:

(1) the actual cost of acquiring or improving real estate for any project;

(2) the actual cost of construction of all or any part of a project which may be constructed, including architects' and engineers' fees;

(3) all expenses in connection with the authorization, sale, and issuance of the bonds to finance such acquisition or improvement;

(4) bond reserves and premiums for insurance of lease rentals pledged to pay the bonds; and

(5) the interest on such bonds for a reasonable time prior to construction, during construction, and for not exceeding 6 months after completion of construction.

History: En. Sec. 7, Ch. 51, L. 1965; amd. Sec. 2, Ch. 234, L. 1975; R.C.M. 1947, 11-4107(part).

Cross-References

Determination of costs — terms of lease, 90-5-106.

90-5-110. Taxation of projects. (1) Notwithstanding that title to a project may be in a municipality or county, such projects shall be subject to taxation to the same extent, in the same manner, and under the same procedures as privately owned property in similar circumstances if such projects are leased to or held by private interests on both the assessment date and the date the levy is made in any year, but such projects shall not be subject to taxation in any year if they are not leased to or held by private interests on both the assessment date and the date the levy is made in any year.

(2) Where personal property owned by a municipality or county is taxed under this section and such personal property taxes are delinquent, levy by warrant for distraint for collection of such delinquent taxes may only be made on personal property against which such taxes were levied.

History: En. Sec. 8, Ch. 51, L. 1965; R.C.M. 1947, 11-4108; amd. Sec. 10, Ch. 239, L. 1983.

Cross-References

Collection of delinquent taxes — warrant for distraint, Title 15, ch. 1, part 7.

Taxation — collection of property taxes, Title 15, ch. 16.

90-5-111. Powers cumulative. Neither this part nor anything herein contained shall be construed as a restriction or limitation upon any powers which a municipality or county might otherwise have under any laws of this state but shall be construed as cumulative.

History: En. Sec. 9, Ch. 51, L. 1965; R.C.M. 1947, 11-4109.

Cross-References

Local governments — general provisions, Title 7, ch. 1.

General municipal and county powers, 90-5-102.

90-5-112. Economic development levy. (1) Subject to 15-10-420, the governing body of a city, county, or town is authorized to levy a tax upon the taxable value of all taxable property in the city, county, or town for the purpose of economic development. The governing body may:

(a) submit the question of the mill levy to the qualified voters as provided in 15-10-425; or

(b) approve the mill levy by a vote of the governing body.

(2) Funds derived from this levy may be used for purchasing land for industrial parks, constructing buildings to house manufacturing and processing operations, conducting preliminary feasibility studies, promoting economic development opportunities in a particular area, and other activities generally associated with economic development. These funds may not

be used to directly assist an industry's operations by loan or grant or to pay the salary or salary supplements of government employees.

(3) The governing body of the county, city, or town may use the funds derived from this levy to contract with local development companies and other associations or organizations capable of implementing the economic development function.

History: En. 11-4111 by Sec. 1, Ch. 311, L. 1975; amd. Sec. 32, Ch. 566, L. 1977; R.C.M. 1947, 11-4111; amd. Sec. 2, Ch. 5, Sp. L. June 1989; amd. Sec. 1, Ch. 457, L. 1991; amd. Sec. 1, Ch. 386, L. 1993; amd. Sec. 1, Ch. 279, L. 1995; amd. Sec. 163, Ch. 584, L. 1999; amd. Sec. 33, Ch. 495, L. 2001; amd. Sec. 243, Ch. 574, L. 2001.

Cross-References

Tax levies to be made in mills and tenths and hundredths of mills, 15-10-201.

90-5-113. Advice and information by department of commerce. The department of commerce shall furnish advice and information in connection with a project when requested to do so by a county or municipality.

History: En. Sec. 10, Ch. 51, L. 1965; amd. Sec. 56, Ch. 348, L. 1974; amd. Sec. 21, Ch. 213, L. 1975; R.C.M. 1947, 11-4110; amd. Sec. 6, Ch. 274, L. 1981.

Cross-References

Department of Commerce, 2-15-1801.
General municipal and county powers, 90-5-102.

90-5-114. Preference of Montana labor. (1) Any contract to construct a project financed pursuant to this part must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents. "Substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.

(2) A contract let for a project costing more than $25,000 and financed from the proceeds of bonds issued under this part on or after July 1, 1993, must contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed.

History: En. Sec. 3, Ch. 653, L. 1985; amd. Sec. 8, Ch. 561, L. 1987; amd. Sec. 4, Ch. 464, L. 1993.

Part 2
Western Interstate Nuclear Compact
State Nuclear Policy

Part Cross-References

Nuclear regulation, Title 50, ch. 79.

90-5-201. Western interstate nuclear compact adopted — text. The Western Interstate Nuclear Compact is entered into and adopted as follows:

WESTERN INTERSTATE NUCLEAR COMPACT

Article I. Policy and Purpose

The party states recognize that the proper employment of scientific and technological discoveries and advances in nuclear and related fields and direct and collateral application and adaptation of processes and techniques developed in connection therewith, properly correlated with the other resources of the region, can assist substantially in the industrial progress of the west and the further development of the economy of the region. They also recognize that optimum benefit from nuclear and related scientific or technological resources, facilities, and skills requires systematic encouragement, guidance, assistance, and promotion from the party states on a cooperative basis. It is the policy of the party states to undertake such cooperation on a continuing basis. It is the purpose of this compact to provide the instruments and framework for such a cooperative effort in nuclear and related fields, to enhance the economy of the west and contribute to the individual and community well-being of the region's people.

Article II. The Board

(1) There is hereby created an agency of the party states to be known as the "western interstate nuclear board", hereinafter called the board. The board shall be composed of one

member from each party state designated or appointed in accordance with the law of the state which he represents and serving and subject to removal in accordance with such law. Any member of the board may provide for the discharge of his duties and the performance of his functions thereon, either for the duration of his membership or for any lesser period of time, by a deputy or assistant, if the laws of his state make specific provisions therefor. The federal government may be represented without vote if provision is made by federal law for such representation.

(2) The board members of the party states shall each be entitled to one vote on the board. No action of the board shall be binding unless taken at a meeting at which a majority of all members representing the party states are present and unless a majority of the total number of votes on the board are cast in favor thereof.

(3) The board shall have a seal.

(4) The board shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The board shall appoint and fix the compensation of an executive director who shall serve at its pleasure and who shall also act as secretary, and who, together with the treasurer and such other personnel as the board may direct, shall be bonded in such amounts as the board may require.

(5) The executive director, with the approval of the board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the board's functions irrespective of the civil service, personnel, or other merit system laws of any of the party states.

(6) The board may establish and maintain, independently or in conjunction with any one or more of the party states or their institutions or subdivisions, a suitable retirement system for its full-time employees. Employees of the board shall be eligible for social security coverage in respect of old age and survivors insurance provided that the board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(7) The board may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm, or corporation.

(8) The board may accept for any of its purposes and functions under this compact any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize, and dispose of the same. The nature, amount, and conditions, if any, attendant upon any donation or grant accepted pursuant to this paragraph or upon any borrowing pursuant to paragraph (7) of this article, together with the identity of the donor, grantor, or lender, shall be detailed in the annual report of the board.

(9) The board may establish and maintain such facilities as may be necessary for the transacting of its business. The board may acquire, hold, and convey real and personal property and any interest therein.

(10) The board shall adopt bylaws and rules for the conduct of its business and shall have the power to amend and rescind these bylaws and rules. The board shall publish its bylaws and rules in convenient form and shall file a copy thereof, and shall also file a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(11) The board annually shall make to the governor of each party state a report covering the activities of the board for the preceding year and embodying such recommendations as may have been adopted by the board, which report shall be transmitted to the legislature of said state. The board may issue such additional reports as it may deem desirable.

Article III. Finances

(1) The board shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

(2) Each of the board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Each

of the board's requests for appropriations pursuant to a budget of estimated expenditures shall be apportioned equally among the party states. Subject to appropriation by their respective legislatures, the board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the board.

(3) The board may meet any of its obligations in whole or in part with funds available to it under Article II, paragraph (8) of this compact, provided that the board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the board makes use of funds available to it under Article II, paragraph (8) hereof, the board shall not incur any obligation prior to the allotment of funds by the party jurisdictions adequate to meet the same.

(4) Any expenses and any other costs for each member of the board in attending board meetings shall be met by the board.

(5) The board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the board shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the board shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become a part of the annual report of the board.

(6) The accounts of the board shall be open at any reasonable time for inspection to persons authorized by the board and duly designated representatives of governments contributing to the board's support.

Article IV. Advisory Committees

The board may establish such advisory and technical committees as it may deem necessary, membership on which may include but not be limited to private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, medicine, education, voluntary health agencies, and officials of local, state, and federal government and may cooperate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

Article V. Powers

The board shall have power to:

(1) encourage and promote cooperation among the party states in the development and utilization of nuclear and related technologies and their application to industry and other fields;

(2) ascertain and analyze on a continuing basis the position of the west with respect to the employment in industry of nuclear and related scientific findings and technologies;

(3) encourage the development and use of scientific advances and discoveries in nuclear facilities, energy, materials, products, byproducts, and all other appropriate adaptations of scientific and technological advances and discoveries;

(4) collect, correlate, and disseminate information relating to the peaceful uses of nuclear energy, materials, and products, and other products and processes resulting from the application of related science and technology;

(5) encourage the development and use of nuclear energy, facilities, installations, and products as part of a balanced economy;

(6) conduct or cooperate in conducting programs of training for state and local personnel engaged in any aspects of:

(a) nuclear industry, medicine, or education, or the promotion or regulation thereof;

(b) applying nuclear scientific advances or discoveries and any industrial commercial or other processes resulting therefrom;

(c) the formulation or administration of measures designed to promote safety in any matter related to the development, use, or disposal of nuclear energy, materials, products, byproducts, installations, or wastes, or to safety in the production, use, and disposal of any other substances peculiarly related thereto;

(7) organize and conduct, or assist and cooperate in organizing and conducting, demonstrations or research in any of the scientific, technological, or industrial fields to which this compact relates;

(8) undertake such nonregulatory functions with respect to nonnuclear sources of radiation as may promote the economic development and general welfare of the west;

(9) study industrial, health, safety, and other standards, laws, codes, rules, regulations, and administrative practices in or related to nuclear fields;

(10) recommend such changes in or amendments or additions to the laws, codes, rules, regulations, administrative procedures and practices or local laws or ordinances of the party states or their subdivisions in nuclear and related fields as in its judgment may be appropriate. Any such recommendations shall be made through the appropriate state agency with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstances which may justify variations to meet local conditions.

(11) consider and make recommendations designed to facilitate the transportation of nuclear equipment, materials, products, byproducts, wastes, and any other nuclear or related substances, in such manner and under such conditions as will make their availability or disposal practicable on an economic and efficient basis;

(12) consider and make recommendations with respect to the assumption of and protection against liability actually or potentially incurred in any phase of operations in nuclear and related fields;

(13) advise and consult with the federal government concerning the common position of the party states or assist party states with regard to individual problems where appropriate in respect to nuclear and related fields;

(14) cooperate with the atomic energy commission, the national aeronautics and space administration, the office of science and technology, or any agencies successor thereto, any other officer or agency of the United States, and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interest;

(15) act as licensee, contractor, or subcontractor of the United States government or any party state with respect to the conduct of any research activity requiring such license or contract and operate such research facility or undertake any program pursuant thereto, provided that this power shall be exercised only in connection with the implementation of one or more other powers conferred upon the board by this compact;

(16) prepare, publish, and distribute, with or without charge, such reports, bulletins, newsletters, or other materials as it deems appropriate;

(17) ascertain from time to time such methods, practices, circumstances, and conditions as may bring about the prevention and control of nuclear incidents in the area comprising the party states, to coordinate the nuclear incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states and to facilitate the rendering of aid by the party states to each other in coping with nuclear incidents. The board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with nuclear incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic area covered by this compact. Any nuclear incident plan in force pursuant to this paragraph shall designate the official or agency in each party state covered by the plan who shall coordinate requests for aid pursuant to Article VI of this compact and the furnishing of aid in response thereto. Unless the party states concerned expressly otherwise agree, the board shall not administer the summoning and dispatching of aid, but this function shall be undertaken directly by the designated agencies and officers of the party states. The plan or plans of the board in force pursuant to this paragraph shall provide for reports to the board concerning the occurrence of nuclear incidents and the requests for aid on account thereof, together with summaries of the actual working and effectiveness of mutual aid in particular instances. From time to time, the board shall analyze the information gathered from reports of aid pursuant to Article VI and such other instances of mutual aid as may have come to its attention, so that experience in the rendering of such aid may be available.

(18) prepare, maintain, and implement a regional plan or regional plans for carrying out the duties, powers, or functions conferred upon the board by this compact;

(19) undertake responsibilities imposed or necessarily involved with regional participation pursuant to such cooperative programs of the federal government as are useful in connection with the fields covered by this compact.

Article VI. Mutual Aid

(1) Whenever a party state or any state or local governmental authorities therein request aid from any other party state pursuant to this compact in coping with a nuclear incident, it shall be the duty of the requested state to render all possible aid to the requesting state which is consonant with the maintenance of protection of its own people.

(2) Whenever the officers or employees of any party state are rendering outside aid pursuant to the request of another party state under this compact, the officers or employees of such state shall, under the direction of the authorities of the state to which they are rendering aid, have the same powers, duties, rights, privileges, and immunities as comparable officers and employees of the state to which they are rendering aid.

(3) No party state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on their part while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith.

(4) All liability that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid shall be assumed and borne by the requesting state.

(5) Any party state rendering outside aid pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment answering a request for aid and for the cost of all materials, transportation, wages, salaries, and maintenance of officers, employees, and equipment incurred in connection with such requests; provided that nothing herein contained shall prevent any assisting party state from assuming such loss, damage, expense, or other cost or from loaning such equipment or from donating such services to the receiving party state without charge or cost.

(6) Each party state shall provide for the payment of compensation and death benefits to injured officers and employees and the representatives of deceased officers and employees in case officers or employees sustain injuries or death while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within the state by or in which the officer or employee was regularly employed.

Article VII. Supplementary Agreements

(1) To the extent that the board has not undertaken an activity or project which would be within its power under the provisions of Article V of this compact, any two or more of the party states, acting by their duly constituted administrative officials, may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify the purpose or purposes, its duration, and the procedure for termination thereof or withdrawal therefrom, the method of financing and allocating the costs of the activity or project, and such other matters as may be necessary or appropriate. No such supplementary agreement entered into pursuant to this article shall become effective prior to its submission to and approval by the board. The board shall give such approval unless it finds that the supplementary agreement or activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the board.

(2) Unless all of the party states participate in a supplementary agreement, any cost or costs thereof shall be borne separately by the states party thereto. However, the board may administer or otherwise assist in the operation of any supplementary agreement.

(3) No party to a supplementary agreement entered into pursuant to this article shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that timely and proper performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

(4) The provisions to this article shall apply to supplementary agreements and activities thereunder but shall not be construed to repeal or impair any authority which officers or agencies of party states may have pursuant to other laws to undertake cooperative arrangements or projects.

Article VIII. Other Laws and Relations

Nothing in this compact shall be construed to:

(1) permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order, or ordinance of a party state or subdivision thereof now or hereafter made, enacted, or in force;

(2) limit, diminish, or otherwise impair jurisdiction exercised by the atomic energy commission, any agency successor thereto, or any other federal department, agency, or officer pursuant to and in conformity with any valid and operative act of congress or limit, diminish, affect, or otherwise impair jurisdiction exercised by any officer or agency of a party state, except to the extent that the provisions of this compact may provide therefor;

(3) alter the relations between the respective internal responsibilities of the government of a party state and its subdivisions;

(4) permit or authorize the board to own or operate any facility, reactor, or installation for industrial or commercial purposes.

Article IX. Eligible Parties, Entry into Force and Withdrawal

(1) Any or all of the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming shall be eligible to become party to this compact.

(2) As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law, provided that it shall not become initially effective until enacted into law by five states.

(3) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 2 years after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall effect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(4) Guam and American Samoa or either of them may participate in the compact to such extent as may be mutually agreed by the board and the duly constituted authorities of Guam or American Samoa, as the case may be. Such participation shall not include the furnishing or receipt of mutual aid pursuant to Article VI, unless that article has been enacted or otherwise adopted so as to have the full force and effect of law in the jurisdiction affected. Neither Guam nor American Samoa shall be entitled to voting participation on the board, unless it has become a full party to the compact.

Article X. Severability and Construction

The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence, or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant thereto shall be liberally construed to effectuate the purposes thereof.

History: En. Sec. 1, Ch. 258, L. 1973; R.C.M. 1947, 82-4401.

Cross-References

Nuclear regulation, Title 50, ch. 79.

Montana Major Facility Siting Act — approval by popular vote of certificate for nuclear facility, 75-20-201.

90-5-202. Board member appointed by governor — compensation. The governor shall appoint the board member. The member shall report directly to the governor. The member, with the approval of the governor, may designate an alternate to represent the state when the member is unable to do so. The member or the alternate may not receive compensation in addition to salary for services as a member of the board but must be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred in the performance of duties.

History: **En. Sec. 2, Ch. 258, L. 1973; amd. Sec. 21, Ch. 453, L. 1977; R.C.M. 1947, 82-4402; amd. Sec. 2872, Ch. 56, L. 2009.**

Cross-References

Governor's power of appointment, Art. VI, sec. 8, Mont. Const.
Powers and duties of Governor, 2-15-201.
Appointments by Governor, Title 5, ch. 5, part 3.

90-5-203. Bylaws and amendments filed with secretary of state. Pursuant to Article II, paragraph (10), of the compact, the western interstate nuclear board shall file copies of the bylaws and amendments thereto with the secretary of state.

History: **En. Sec. 3, Ch. 258, L. 1973; R.C.M. 1947, 82-4403.**

Cross-References

Public records management, Title 2, ch. 6, parts 10 and 11.

90-5-204 through 90-5-210 reserved.

90-5-211. Declaration of policy. It is hereby declared that the people of Montana are opposed to:

(1) the placement of MX missiles in Montana; and

(2) any further testing, development, or deployment of nuclear weapons by any nation.

History: **En. Sec. 1, I.M. No. 91, approved Nov. 2, 1982.**

Part 3

Employee Ownership Opportunity Act

90-5-301. Short title. This part may be cited as the "Employee Ownership Opportunity Act".

History: **En. Sec. 1, Ch. 671, L. 1989.**

90-5-302. Employee ownership development policy. It is the policy of this state to encourage the formation of employee-owned enterprises in order to stabilize local economies, to anchor business activity by increasing and broadening community investments, to increase productivity, and to encourage new capital formation through employee ownership.

History: **En. Sec. 2, Ch. 671, L. 1989.**

90-5-303. Definitions. As used in this part, the following definitions apply:

(1) "Employee ownership group" means a group that may include a corporation, labor organization, or other groups of persons voluntarily affiliated for the purpose of actively engaging in an effort to establish an employee-owned enterprise.

(2) "Employee-owned enterprise" means a business corporation that:

(a) requires that at least a majority of its employees:

(i) are vested with stock in the enterprise and all of whose vested employees are entitled to vote; and

(ii) own a majority of the shares which must be voted so that the vote of a majority of the employees control the vote of a majority of shares;

(b) requires that voting rights on corporate matters for shares held in trust for the employees pass through to those employees at least to the extent required by the voting requirements of section 409(e) of the Internal Revenue Code of 1986, as amended;

(c) provides vested employees the right to vote on corporate matters, including merger, consolidation, recapitalization, reclassification, liquidation, dissolution, or sale; and

(d) requires that at least a majority of the members of the board of directors is elected by the employees of the enterprise.

History: **En. Sec. 3, Ch. 671, L. 1989.**

90-5-304. Extension of business assistance services to employee-owned enterprises. A business assistance program operated by the state must include employee-owned enterprises within the scope of its business assistance activities. An employee-owned enterprise is eligible for assistance, service, or financing available through any business assistance program receiving state money.

History: **En. Sec. 4, Ch. 671, L. 1989.**

90-5-305. Department to offer employee ownership development assistance and counseling. Upon request by an employee group or organization, the department of commerce shall provide technical assistance and counseling on the establishment and management of employee-owned enterprises.

History: En. Sec. 5, Ch. 671, L. 1989; amd. Sec. 1, Ch. 10, L. 1999.

CHAPTER 6
COMMUNITY IMPACT — PLANNING AND ABATEMENT

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90-6-711 through 90-6-714 reserved.
90-6-715. Special revenue account — use.
90-6-716. Exemption from environmental review.

Part 8 — Quality Schools Facility Grant Program (Repealed)

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Part 10 — Oil, Gas, and Coal Resource Funding

90-6-1001. Oil, gas, and coal natural resource accounts.

Chapter Cross-References

Metropolitan sanitary and/or storm sewer district, Title 7, ch. 13, part 1.
Bonds — revenue, 17-6-103, 17-6-211.
Negotiable instruments, Title 30, ch. 3.
Pledges, 71-2-101.
Small tract financing, Title 71, ch. 1, part 3.

Part 1
Financing of Housing

Part Cross-References

Board of Housing, 2-15-1814.
County housing authorities, Title 7, ch. 15, part 21.
Urban renewal, Title 7, ch. 15, parts 42 and 43.
Municipal housing authorities, Title 7, ch. 15, parts 44 and 45.
Bond issues, Title 17, ch. 5.
Mortgages, Title 71, ch. 1.

90-6-101. Short title. This part shall be known and may be cited as the "Housing Act of 1975".

History: En. 35-501 by Sec. 1, Ch. 461, L. 1975; R.C.M. 1947, 35-501.

90-6-102. Legislative declaration. The legislature finds and declares that there is a shortage in Montana of decent, safe, and sanitary housing which is within the financial capabilities of lower income persons and families. In order to alleviate the high cost of housing for these persons, the legislature believes that it is essential that additional public moneys be made available through the issuance of revenue bonds to assist both private enterprise and governmental agencies in meeting critical housing needs.

History: En. 35-502 by Sec. 2, Ch. 461, L. 1975; R.C.M. 1947, 35-502.

Cross-References

Rate of interest on bonds to be determined by governing bodies — limitations and exceptions, 17-5-102.

90-6-103. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of housing created in 2-15-1814.

(2) "Bond" means any bonds, notes, debentures, interim certificates, or other evidences of financial indebtedness issued by the board pursuant to this part, including those on which interest payments are taxable and those on which interest payments are tax exempt.

(3) "Capital reserve account" means the capital reserve account provided for in 90-6-107.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Federally insured mortgage" means a mortgage loan for land development or residential housing insured or guaranteed by the United States or a governmental agency or instrumentality of the United States or a commitment by the United States or a governmental agency or instrumentalities of the United States to insure a mortgage.

(6) "Federally insured security" means an evidence of indebtedness insured or guaranteed as to repayment of principal and interest by the United States or an instrumentality of the United States.

(7) "Governmental agency" means any department, division, public corporation, public agency, political subdivision, or other public instrumentality of the state, the federal government, any other state or public agency, or any two or more of the entities listed in this subsection.

(8) "Housing development" means single-family homes, multifamily projects, housing for the elderly projects, nursing home projects, personal-care projects, and any work or undertaking financed in whole or in part under this part for the primary purpose of acquiring, constructing, or rehabilitating accommodations for persons or families of lower income in need of housing. An undertaking may include any buildings, land, equipment, facilities, or other real or personal properties that are necessary, convenient, or desirable in connection with a development, including but not limited to streets, sewers, utilities, parks, site preparation, landscaping, and other nonhousing facilities that the board determines to be necessary, convenient, or desirable.

(9) "Housing development costs" means the sum total of all costs incurred in a housing development approved by the board as reasonable and necessary, including but not limited to:

(a) cost of land acquisition and any buildings on the land, including payments for options, deposits, or contracts to purchase properties on the proposed housing development site or payments for the purchase of properties;

(b) cost of site preparation, demolition, and clearing;

(c) architectural, engineering, legal, accounting, corporation, and other fees paid or payable in connection with the planning, execution, and financing of the housing development and the finding of an eligible mortgagee or mortgagees for the housing development;

(d) cost of necessary studies, surveys, plans, and permits;

(e) insurance, interest, financing, tax and assessment costs, and other operating and carrying costs during construction;

(f) cost of construction, rehabilitation, reconstruction, fixtures, furnishings, equipment, machinery, apparatus, and similar facilities related to the real property;

(g) cost of land improvements, including landscaping and offsite improvements, whether or not the costs have been paid in cash or in a form other than cash;

(h) necessary expenses in connection with initial occupancy of the housing development;

(i) a reasonable profit and risk fee in addition to job overhead to the general contractor and, if applicable, a limited-profit housing sponsor;

(j) an allowance established by the board for working capital and contingency reserves and reserves for any anticipated operating deficits during construction and initial occupancy;

(k) cost of other items, including tenant relocation, that the board determines to be reasonable and necessary for the housing development, less any net rents and other net revenue received from the operation of the real and personal property on the development site during the construction.

(10) "Housing sponsor" means individuals, joint ventures, partnerships, limited partnerships, trusts, firms, associations, corporations, governmental agencies, limited-profit housing sponsors, nonprofit corporations, or other legal entities or any combination of the entities listed in this subsection that are:

(a) approved by the board;

(b) qualified to either own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development;

(c) subject to the rules of the board and other terms and conditions set forth in this part.

(11) "Lending institution" means any public or private entity or governmental agency approved by the board maintaining an office in this state and authorized by law to make or participate in making residential mortgages in the state.

(12) "Limited-profit housing sponsor" means a corporation, trust, partnership, association, other entity, or an individual restricted as to distribution of income and regulated as to rents, charges, rate of return, and methods of operation as the board determines necessary to carry out this part.

(13) "Mortgage" means a mortgage deed, deed of trust, or other instrument that constitutes a valid lien on real property in fee simple or on a leasehold under a lease having a remaining term at the time that the mortgage is acquired that does not expire for at least that number of years beyond the maturity date of the obligation secured by the mortgage established by the board as necessary to protect its interest as mortgagee.

(14) "Mortgage loan" means an interest-bearing obligation secured by a mortgage on land and improvements in the state.

(15) "Nonprofit housing sponsor" means a housing cooperative formed under Title 35, chapter 15, or a nonprofit corporation formed under Title 35, chapter 2, restricted as to distribution of income and regulated as to rents, charges, rate of return, and methods of operation as the board determines necessary, and whose articles of incorporation provide in addition that:

(a) the organization has been organized exclusively to provide housing developments for persons and families of lower income;

(b) all the income and earnings of the organization must be used exclusively for housing development purposes and part of the net income or net earnings of the organization may not inure to the benefit or profit of any private individual, firm, corporation, partnership, or association;

(c) the organization is in no manner controlled or under the direction or acting in the substantial interest of any private individual, firm, partnership, or association seeking to derive profit or gain from the organization or seeking to eliminate or minimize losses in any transactions with the organization, except that the limitations apply to members of a cooperative only to the extent provided by rules of the board;

(d) the operations of the organization may be supervised by the board and the organization will enter into agreements with the board to regulate planning, development, and management of any housing development undertaken by the organization and the disposition of the property or other interests of the organization.

(16) "Persons and families of lower income" means persons and families with insufficient personal or family income or other financial resources who require assistance under this part, as determined by the board, taking into consideration:

(a) the amount of the total personal and family income, assets, and other financial resources available for housing needs;

(b) the size of the family;

(c) the eligibility of persons and families under federal housing assistance of any type based on lower income or a functional or physical disability;

(d) the ability of persons and families to compete successfully in the normal housing market and to pay the amount at which private enterprise is providing decent, safe, and sanitary housing;

(e) the availability and cost of housing in particular areas; and

(f) needs of particular persons or families because of age or physical disabilities.

(17) "Rehabilitation" means the repair, reconstruction, or improvement of an existing structure to provide decent, safe, and sanitary housing or to conform housing with state or local health, building, fire prevention, and safety codes as determined by the board.

History: En. 35-503 by Sec. 3, Ch. 461, L. 1975; amd. Sec. 1, Ch. 163, L. 1977; R.C.M. 1947, 35-503; amd. Sec. 1, Ch. 357, L. 1979; amd. Sec. 11, Ch. 274, L. 1981; amd. Sec. 1, Ch. 90, L. 1983; amd. Sec. 1, Ch. 359, L. 1983; amd. Sec. 79, Ch. 472, L. 1997.

Cross-References

Federal housing securities eligible as collateral, 32-1-435.

Mortgages, Title 71, ch. 1.

Reserve funds and appropriations, 90-6-119.

90-6-104. General powers of the board. The board may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of this part, including rules concerning its mortgage, construction, and temporary lending programs;

(4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under this part;

(5) enter into agreements or other transactions with any federal, state, or local governmental agency, any persons, and any domestic or foreign partnership, corporation, association, or organization in carrying out this part;

(6) enter into agreements under its rules with sponsors, mortgagors, or lending institutions for the purpose of regulating the analysis, planning, development, and management of housing developments financed in whole or in part by the proceeds of its loans or securities and mortgage purchase programs;

(7) enter into agreements or other transactions with, and accept grants and the cooperation of, any governmental agency in furtherance of this part, including but not limited to the development, leasing, maintenance, operation, and financing of any housing development;

(8) accept services, appropriations, gifts, grants, bequests, and devises and utilize or dispose of them in carrying out this part;

(9) acquire real or personal property or any right, interest, or easement therein by gift, purchase, transfer, foreclosure, lease, or otherwise; hold, sell, assign, lease, encumber, mortgage, or otherwise dispose thereof; hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control or custody; release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption; do any of the foregoing by public or private sale, with or without public bidding; commence any

action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement; bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure; and operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests and the holders of its bonds or notes and consistent with any agreement with such holders;

(10) service and contract and pay for the servicing of loans;

(11) provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of housing developments for persons and families of lower income where these services are not otherwise available;

(12) provide general consultative services to housing developments for persons and families of lower income and the residents thereof with respect to counseling and training in management, home ownership, and maintenance where these services are not otherwise available;

(13) invest any funds not required for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title 17, chapter 6, except all investment income from funds of the board less the cost for investment as prescribed by law must be deposited in the housing authority enterprise fund;

(14) sell its loans or securities to the federal national mortgage association or any other agency or instrumentality of the United States and invest in the capital stock issued by the association or other agency or instrumentality to the extent, if any, required as a condition of the sale;

(15) consent, whenever it considers it necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, and payment of any installment of principal or interest, security, or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(16) collect reasonable interest, fees, and charges in connection with making and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness and in connection with providing technical, consultative, and project assistance services. Interest fees and charges are limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses that may be incurred.

(17) procure insurance against any loss in connection with its mortgages and mortgage loans and other assets or property in amounts and from insurers as the board considers desirable or necessary;

(18) act as agent for governmental agencies concerning acquisition, construction, leasing, operation, or management of a housing development;

(19) issue notes and bonds and replace lost, destroyed, or mutilated notes and bonds; and

(20) develop special programs for housing developments for veterans of the armed forces of the United States who are unable to acquire safe and sanitary housing through lending institutions by conventional means.

History: En. 35-504 by Sec. 5, Ch. 461, L. 1975; R.C.M. 1947, 35-504; amd. Sec. 1, Ch. 249, L. 1983; amd. Sec. 29, Ch. 686, L. 1983; amd. Sec. 31, Ch. 701, L. 1983; amd. Sec. 15, Ch. 581, L. 1987; amd. Sec. 14, Ch. 589, L. 1991; amd. Sec. 1, Ch. 51, L. 2017.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Adoption of rules, 90-6-106.
Financing programs of Board, 90-6-108.

90-6-105. Meetings and acts of the board. (1) All meetings of the board are open to the public.

(2) All official acts of the board shall be in a regular or special meeting and by a majority of the board.

(3) All rules adopted by the board shall be in accordance with the Montana Administrative Procedure Act.

History: En. 35-525 by Sec. 26, Ch. 461, L. 1975; R.C.M. 1947, 35-525.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

90-6-106. Adoption of rules. (1) The board shall adopt rules respecting the regulation of borrowers, the admission of occupants in housing developments, the construction of ancillary facilities, and requirements or restrictions necessary to implement this part.

(2) The board shall adopt rules for the:

(a) organization, approval, standards, and regulation of housing sponsors and eligible recipients;

(b) approval, standards, and regulation of lending institutions under this part;

(c) assessment, collection, and payment of all fees and charges in connection with making, purchasing, and servicing of its bonds and notes, mortgage lending, construction lending, temporary lending, and security purchase programs;

(d) assessment and collection of fees and charges in connection with its technical, consultative, and project assistance activities;

(e) determination and regulation of mortgagor and lending institution and their use of funds under this part, sponsor and mortgagor equity definitions and limitations, and housing development costs;

(f) percentage of housing units or housing developments assisted under this part that are reserved for lower income persons and families and which allows for an economic mixture of residents.

History: **En. 35-505 by Sec. 6, Ch. 461, L. 1975; R.C.M. 1947, 35-505(2), (3).**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

General powers of Board — rulemaking, 90-6-104(3).

90-6-107. Deposit and expenditure of funds. (1) There is a housing authority enterprise fund in the proprietary fund type as provided for in 17-2-102(2). All funds from the proceeds of bonds issued under this part, fees, and other money received by the board, money appropriated by the legislature for the use of the board in carrying out this part, and money made available from any other source for the use of the board must be deposited in the housing authority enterprise fund. All funds deposited in the housing authority enterprise fund, except funds appropriated by the legislature for use of the board in payment of expenses incurred in carrying out this part, are continuously appropriated to and may be expended by the board for the purposes authorized in this part.

(2) There is a capital reserve account in the housing authority enterprise fund provided for in subsection (1). The capital reserve account consists of the aggregate money retained by the board under existing agreements with bondholders as the minimum capital reserve requirement described in 90-6-119 for each bond issue sold by the board.

(3) Funds appropriated by the legislature for use of the board in payment of expenses incurred in carrying out this part must be deposited in the housing authority enterprise fund. Funds expended by the board under this subsection must be repaid by the board from the fees and charges collected under this part and from any other money available for repayment in accordance with this part.

History: **En. 35-523 by Sec. 24, Ch. 461, L. 1975; R.C.M. 1947, 35-523; amd. Sec. 2, Ch. 249, L. 1983; amd. Sec. 6, Ch. 11, Sp. L. July 1992; amd. Sec. 37, Ch. 34, L. 2001; amd. Sec. 1, Ch. 426, L. 2007.**

Cross-References

Fund structure, 17-2-102.

90-6-108. Financing programs of the board. The board may:

(1) make loans to lending institutions under terms and conditions adopted by the board requiring the proceeds to be used by the lending institution for the making of mortgage loans for housing developments in the state for persons and families of lower income;

(2) invest in, purchase or make commitments to purchase, and take assignments from lending institutions of notes, mortgages, and other securities evidencing loans for the construction, rehabilitation, purchase, leasing, or refinancing of housing developments for persons and families of lower income in this state, under terms and conditions adopted by the board;

(3) make, undertake commitments to make, and participate in the making of mortgage loans, including federally insured mortgage loans, and make temporary loans and advances in anticipation of permanent mortgage loans to housing sponsors to finance the construction

or rehabilitation of housing developments designed and planned for occupancy by persons and families of lower income in this state, under terms and conditions adopted by the board;

(4) make, undertake commitments to make, and participate in the making of loans to persons and families of lower income for housing development under terms and conditions adopted by the board, including without limitation persons and families of lower income who are eligible or potentially eligible for federally insured loans, federal mortgages, or other federal housing assistance, when the board determines that mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(5) require that loans made to or securities issued by lending institutions shall be additionally secured as to payment of principal and interest by a pledge of and a lien upon collateral security in amounts and consisting of obligations and securities as the board determines necessary to assure prompt payment of loans and interest. Collateral may be required to be lodged with a bank or trust company designated by the board as custodian, or the board may enter into an agreement with the lending institution requiring it to identify and maintain and service the collateral and the income therefrom solely in accordance with the agreement. A copy of each agreement and any revisions or supplements thereto shall be filed with the secretary of state, and no further filing or other action under the Uniform Commercial Code or any other law shall be required to perfect the security interest of the board in the collateral or in any additions or substitutions. The lien and trust is binding from the time it is made against all parties having claims of any kind in tort, contract, or otherwise against the lending institution.

History: En. 35-505 by Sec. 6, Ch. 461, L. 1975; R.C.M. 1947, 35-505(1), (4).

Cross-References

Security interest of collecting bank in items, accompanying documents, and proceeds, 30-4-208.
Liens, Title 71, ch. 3, part 1.
General powers of Board, 90-6-104.

90-6-109. Procedure prior to financing of housing developments. (1) The board may finance housing developments under this part only when the board finds that:

(a) there exists a shortage of decent, safe, and sanitary housing at rentals or prices which persons and families of lower income can afford within the general housing market area to be served by the proposed housing development;

(b) private enterprise has not provided an adequate supply of decent, safe, and sanitary housing in the housing market area at rentals or prices which persons or families of lower income can afford or provided sufficient mortgage financing for housing developments for occupancy by persons or families of lower income;

(c) the housing sponsor undertaking the proposed housing development in this state will supply well planned, well designed housing, and such sponsors are financially responsible;

(d) the housing development to be assisted under this part will be of public use and will provide a public benefit, taking into account the existence of local government comprehensive plans, housing and land use plans and regulations, areawide plans, and other public desires;

(e) the housing development does not involve the construction of second homes (for purposes of this paragraph, "second home" means a home which would not qualify as the primary residence of the taxpayer for federal income tax purposes relating to capital gains on the sale or exchange of residential property); and

(f) as to direct loans it is necessary to qualify for federal funds.

(2) The findings required under subsection (1) must be made after a public hearing whenever the financing of housing relates to a development for rental units owned by a for-profit housing sponsor. The board shall conduct the hearing unless it directs the governing body of the local government in which the proposed housing development is to be located to conduct the hearing.

History: En. 35-506 by Sec. 7, Ch. 461, L. 1975; R.C.M. 1947, 35-506; amd. Sec. 2, Ch. 359, L. 1983.

90-6-110. Supervision of housing sponsors. (1) The board may supervise housing sponsors of housing developments financed under this part as follows:

(a) prescribe uniform systems of accounts and records for housing sponsors and require them to make reports and give answers to specific questions on forms and at times specified by the board;

(b) enter upon and inspect the housing development and examine all books and records of the housing sponsor with respect to capitalization, income, and other matters as specified by the board;

(c) supervise the operation and maintenance of any housing development and order repairs necessary to protect the public and the board's interest or the health, welfare, or safety of the occupants;

(d) determine standards for and control resident selection by a housing sponsor;

(e) require any housing sponsor to pay to the board fees as it prescribes in connection with the examination, inspection, supervision, auditing, or other regulation of the housing sponsor;

(f) order any housing sponsor to do or to refrain from doing things necessary to comply with the provisions of law, the rules of the board, and the terms of any contract or agreement to which the housing sponsor is a party;

(g) regulate the retirement of any capital investment or the redemption of stock where any such retirement or redemption when added to any dividend or other distribution shall exceed in any one fiscal year 10% or a lesser amount of the original face amount of any investment or equity of any housing sponsor, as determined by the board; and

(h) adopt rules specifying the categories of cost which shall be allowable in the construction or rehabilitation of a housing development.

(2) The board shall require any housing sponsor to certify the actual housing development costs prior to periodic payments or upon completion of the housing development, subject to audit and determination by the board. The board may accept, in lieu of any certification of housing development costs, other assurances of the housing development costs, in any form or manner whatsoever, as will enable the board to determine with reasonable accuracy the amount of housing development costs.

History: En. 35-507 by Sec. 8, Ch. 461, L. 1975; R.C.M. 1947, 35-507.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
State building code, Title 50, ch. 60, part 2.

90-6-111. Bonds and notes. (1) The board may by resolution, from time to time, issue negotiable notes and bonds in a principal amount that the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under 90-6-119, and all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds to pay notes, including interest, and, whenever it considers refunding expedient, refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its notes and bonds must be obligations of the board payable out of any revenue, assets, or money of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenue, assets, or money.

(4) The notes and bonds must be authorized by resolutions of the board, must bear a date, and must mature at times that the resolutions provide. A note may not mature more than 10 years and a bond may not mature more than 50 years from the date of its issue. The bonds may be issued as serial bonds payable in annual or semiannual installments or as term bonds or as a combination of both. The notes and bonds must bear interest at a rate or rates, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places within or without the state, and be subject to terms of redemption as provided in resolutions. The board shall designate whether interest payments on the bonds are taxable or tax exempt. The notes and bonds of the board may be sold at public or private sale at prices, which may be above or below par, determined by the board.

(5) The total amount of notes and bonds outstanding at any time, except notes or bonds as to which the board's obligation has been satisfied and discharged by refunding or for which reserve for payment or other means of payment have been otherwise provided, may not exceed

$1.5 billion. The issue price of bonds sold at a discount, not the face amount of the bonds, counts against this statutory ceiling.

History: En. 35-508 by Sec. 9, Ch. 461, L. 1975; R.C.M. 1947, 35-508; amd. Sec. 1, Ch. 518, L. 1979; amd. Sec. 1, Ch. 522, L. 1979; amd. Sec. 1, Ch. 53, L. 1981; amd. Sec. 1, Ch. 64, L. 1981; amd. Sec. 3, Ch. 359, L. 1983; amd. Sec. 1, Ch. 403, L. 1985; amd. Sec. 1, Ch. 89, L. 2003.

Cross-References

Rate of interest on bonds to be determined by governing bodies — limitations and exceptions, 17-5-102.
Refunding bonds, Title 17, ch. 5, part 3.
Trust indenture, 90-6-116.
Signatures of prior Board members valid, 90-6-118.

90-6-112. Provision of bond resolutions. A resolution authorizing any notes or bonds, or any issue thereof, may contain provisions, which shall be a part of the contract or contracts with the holders thereof, as to:

(1) pledging all or any part of the revenues or property of the board to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(2) pledging all or any part of the assets of the board, including mortgages and obligations securing them, to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(3) the use and disposition of the gross income from mortgages owned by the board and payment of principal of mortgages owned by the board;

(4) the setting aside of reserves of sinking funds in the hands of trustees, paying agents, and other depositories and the regulation and disposition thereof;

(5) limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and the pledge of the proceeds to secure the payment of the notes or bonds or of any issue thereof;

(6) limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding notes or bonds;

(7) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(8) a commitment to employ adequate and competent personnel at such reasonable compensation, salaries, fees, and charges as may be determined by the board in conjunction with the department of commerce and to maintain suitable facilities and services for the purpose of carrying out its programs;

(9) vesting in a trustee property, rights, powers, and duties in trust as the board determines;

(10) defining the acts or omissions to act which shall constitute a default in the obligations and duties of the board to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver. Rights and remedies shall not be inconsistent with the laws of the state and the other provisions of this part; and

(11) any other matters of like or different character which in any way affect the security or protection of the holders of the notes or bonds.

History: En. 35-509 by Sec. 10, Ch. 461, L. 1975; R.C.M. 1947, 35-509; amd. Sec. 1, Ch. 143, L. 1979; amd. Sec. 11, Ch. 274, L. 1981.

Cross-References

Pledges, 71-2-101.
Trust administration, Title 72, ch. 38.

90-6-113. Validity of pledge. Any pledge made by the board shall be valid and binding from the time the pledge is made. The revenues, moneys, or property pledged and thereafter received by the board shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act. The lien of any pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the board, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

History: **En. 35-510 by Sec. 11, Ch. 461, L. 1975; R.C.M. 1947, 35-510.**

Cross-References

Pledges, 71-2-101.

90-6-114. Personal liability. The board members and employees of the department are not personally liable or accountable by reason of the issuance of or on any bond or note issued by the board.

History: **En. 35-511 by Sec. 12, Ch. 461, L. 1975; R.C.M. 1947, 35-511.**

90-6-115. Purchase of notes and bonds — cancellation. The board, subject to existing agreements with noteholders or bondholders, may, out of any funds available for that reason, purchase notes or bonds of the board, which shall thereupon be canceled, at a price not exceeding:

(1) the current redemption price plus accrued interest to the next interest payment thereon, if the notes or bonds are then redeemable; or

(2) the redemption price applicable on the first date after the purchase upon which the notes or bonds become subject to redemption plus accrued interest to that date, if the notes or bonds are not then redeemable.

History: **En. 35-512 by Sec. 13, Ch. 461, L. 1975; R.C.M. 1947, 35-512.**

Cross-References

Redemption of bonds — optional method, 17-5-105.

90-6-116. Trust indenture. (1) In the discretion of the board, the bonds may be secured by a trust indenture between the board and a corporate trustee, which may be a trust company or bank having the power of a trust company within or without the state. A trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders which are reasonable and proper and not in violation of law, including covenants setting forth the duties of the board in relation to the exercise of its powers and the custody, safeguarding, and application of all money. The board may provide by a trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under the trust indenture of another depository and for the method of disbursement, with safeguards and restrictions it considers necessary.

(2) All expenditures incurred in carrying out a trust indenture may be treated as part of the operating expenditures of the board.

History: **En. 35-513 by Sec. 14, Ch. 461, L. 1975; R.C.M. 1947, 35-513; amd. Sec. 4, Ch. 51, L. 1979.**

Cross-References

Trust indentures — security for small tract financing, 71-1-303.

90-6-117. Negotiability of bonds. Notes and bonds issued by the board are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of notes and bonds.

History: **En. 35-514 by Sec. 15, Ch. 461, L. 1975; R.C.M. 1947, 35-514.**

Cross-References

Negotiable instruments, Title 30, ch. 3.

90-6-118. Signatures of board members. In case any of the board members whose signatures appear on notes or bonds or coupons cease to be members before the delivery of the notes or bonds, their signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the members had remained in office until delivery.

History: **En. 35-515 by Sec. 16, Ch. 461, L. 1975; R.C.M. 1947, 35-515.**

90-6-119. Reserve funds and appropriations. (1) The board shall pay into the capital reserve account:

(a) any funds appropriated and made available by the state for the purpose of the account;

(b) any proceeds of sale of notes or bonds to the extent provided in the resolutions or indentures of the board authorizing their issuance; and

(c) any other funds which may be available to the board for the purpose of the account from any other source.

(2) All funds held in the capital reserve account shall be used solely for the payment of the principal of bonds secured in whole or in part by the account or of the debt service payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payment of any redemption premium required to be paid when the bonds

are redeemed prior to maturity. Funds in the account shall not be withdrawn at any time in an amount which reduces the amount of the account to less than the sum of minimum capital reserve requirements established for the account, except, with respect to bonds secured in whole or in part by the account, for the purpose of making payment, when due, of principal, interest, redemption premiums, and debt service payments for the payment of which other moneys pledged are not available. Any income or interest earned by or incremental to the capital reserve account due to its investment may be transferred to other accounts of the board to the extent it does not reduce the amount of the capital reserve account below the sum of minimum capital reserve requirements for the account.

(3) The board may not issue bonds secured in whole or in part by the capital reserve account unless the board deposits in the account from the proceeds of the bonds issued or from any other sources an amount not less than the minimum capital reserve requirement for these bonds. For the purposes of this section, the term "minimum capital reserve requirement" means, as of any particular date of computation, an amount of money, as provided in the resolution or indenture of the board authorizing the bonds or notes, equal to not more than the greatest of the respective amounts for the current or any future fiscal year of the board of annual debt service on the bonds of the board secured in whole or in part by the account. The annual debt service for any fiscal year is the amount of money equal to the aggregate of all interest and principal payable on the bonds during the fiscal year, calculated on the assumption that all the bonds are paid at maturity. If any amount of the bonds is required to be redeemed on an earlier date by the operation of a debt service fund, then that amount is considered payable on those bonds during the year they are to be redeemed for the purposes of this calculation.

(4) In computing the amount of the capital reserve account, securities in which all or a portion of the account shall be invested shall be valued at par or, if purchased at less than par, at their cost to the board.

History: En. 35-516 by Sec. 17, Ch. 461, L. 1975; R.C.M. 1947, 35-516; amd. Sec. 3, Ch. 249, L. 1983.

Cross-References

Fund structure, 17-2-102.

90-6-120. Maintenance of capital reserve account. (1) In order to ensure the maintenance of the capital reserve account, the presiding officer of the board shall on or before September 1 in the year preceding the convening of the legislature deliver to the governor a certificate stating the sum, if any, required to restore the capital reserve account to the minimum capital reserve requirement. The governor shall include in the executive budget submitted to the legislature the sum required to restore the capital reserve account to the sum of minimum capital reserve requirements. All sums appropriated by the legislature must be deposited in the capital reserve account.

(2) All amounts appropriated to the board by the legislature under this section constitute advances to the board and, subject to the rights of the holders of any bonds or notes of the board, must be repaid to the state's general fund, without interest from available operating revenues of the board in excess of amounts required for the payment of bonds, notes, or other obligations of the board, for maintenance of the capital reserve account, and for operating expenses.

History: En. 35-517 by Sec. 18, Ch. 461, L. 1975; R.C.M. 1947, 35-517; amd. Sec. 2873, Ch. 56, L. 2009.

Cross-References

Budgeting, Title 17, ch. 7.
Accounts of Board, 90-6-107.

90-6-121. Refunding obligations — issuance. The board may provide for the issuance of refunding obligations for refunding any obligations then outstanding which have been issued under this part, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of the obligations. The issuance of obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the board are governed by the appropriate provisions of this part which relate to the issuance of obligations.

History: En. 35-518 by Sec. 19, Ch. 461, L. 1975; R.C.M. 1947, 35-518.

Cross-References

Refunding bonds, Title 17, ch. 5, part 3.

90-6-122. Refunding obligations — sale. Refunding obligations issued as provided in 90-6-121 may be sold or exchanged for outstanding obligations issued under this part. The proceeds may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds of refunding obligations, with other available funds, to the payment of principal, accrued interest, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds may be invested as provided in Title 17, chapter 6.

History: En. 35-519 by Sec. 20, Ch. 461, L. 1975; R.C.M. 1947, 35-519.

Cross-References

Refunding bonds — sale of bonds and debentures, 17-5-305.

Deposits and investments, Title 17, ch. 6.

90-6-123. Credit of state not pledged. Obligations issued under the provisions of this part do not constitute a debt or liability or obligation or a pledge of the faith and credit of the state but are payable solely from the revenues or assets of the board. An obligation issued under this part shall contain on the face thereof a statement to the effect that the state of Montana is not liable on the obligation and the obligation is not a debt of the state and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the obligation.

History: En. 35-520 by Sec. 21, Ch. 461, L. 1975; R.C.M. 1947, 35-520.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

90-6-124. Annual audit. (1) There shall be an audit of the board's books and records at least once each fiscal year.

(2) The legislative auditor may conduct an audit at the request of the legislative audit committee.

History: En. 35-521 by Sec. 22, Ch. 461, L. 1975; R.C.M. 1947, 35-521.

Cross-References

Legislative Auditor, Title 5, ch. 13, part 3.

90-6-125. Tax exemption of bonds. Bonds, notes, or other obligations issued by the board under this part or by local housing authorities under Title 7, chapter 15, parts 21, 44, and 45, their transfer, and their income (including any profits made on their sale) are free from taxation by the state or any political subdivision or other instrumentality of the state, except for estate taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it.

History: En. 35-522 by Sec. 23, Ch. 461, L. 1975; R.C.M. 1947, 35-522; amd. Sec. 34, Ch. 9, Sp. L. May 2000.

Cross-References

Tax-exempt property, Title 15, ch. 6, part 2.

Inheritance and estate taxes, Title 72, ch. 16.

90-6-126. Pledge of the state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the board and the holders of notes and bonds issued by the board, including but not limited to an agreement to administer a loan program financed by the issuance of bonds and to employ a staff sufficient and competent for this purpose.

History: En. 35-524 by Sec. 25, Ch. 461, L. 1975; R.C.M. 1947, 35-524; amd. Sec. 2, Ch. 143, L. 1979.

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

90-6-127. Allocation of state limit. (1) All of the aggregate amount of qualified mortgage bonds that may be issued during any calendar year in accordance with section 146 of the Internal Revenue Code, 26 U.S.C. 146, as amended, is allocated to the board of housing.

(2) The board of housing may adopt standards for determining and may designate areas of chronic economic distress within the meaning of section 143(j)(3) of the Internal Revenue Code, 26 U.S.C. 143(j)(3), as amended.

History: En. Sec. 1, Ch. 54, L. 1981; amd. Sec. 311, Ch. 42, L. 1997; amd. Sec. 133, Ch. 114, L. 2003.

90-6-128 through 90-6-130 reserved.

90-6-131. Legislative declaration. (1) The legislature finds that escalating land costs, current economic conditions, federal housing policies, and declining resources at the federal, state, and local levels adversely affect the ability of low-income and moderate-income persons to obtain safe, decent, accessible, and affordable housing.

(2) The legislature further finds that the state will lose substantial sums allocated to it by the federal government for affordable housing for low-income and moderate-income households unless matching funds are provided.

(3) The legislature declares that it is in the public interest to establish a continuously renewable financial resource known as the housing Montana fund to assist low- and moderate-income citizens in meeting their basic housing needs. Long-term affordability is the goal.

History: En. Sec. 1, Ch. 312, L. 1999; amd. Sec. 1, Ch. 455, L. 2003; amd. Sec. 2, Ch. 426, L. 2007.

90-6-132. Definitions. As used in 90-6-131 through 90-6-137, the following definitions apply:

(1) "Board" means the board of housing created in 2-15-1814.

(2) "Coal tax trust fund" means the trust fund created pursuant to Article IX, section 5, of the Montana constitution.

(3) "Fund" means the housing Montana fund created in 90-6-133.

(4) "Housing development" has the meaning provided in 90-6-103.

(5) "Low-income" means households whose incomes do not exceed 80% of the median income in the area, as determined by the United States department of housing and urban development, with adjustments for smaller or larger families.

(6) "Moderate-income" means households whose incomes are between 81% and 95% of the median income for the area, as determined by the United States department of housing and urban development, with adjustments for smaller and larger families.

History: En. Sec. 2, Ch. 312, L. 1999; amd. Sec. 3, Ch. 426, L. 2007; amd. Sec. 3, Ch. 460, L. 2019.

90-6-133. Housing Montana fund — administration. (1) (a) There is a housing Montana fund in the housing authority enterprise fund provided for in 90-6-107. The money in the fund is allocated to the board for the purpose of providing loans to eligible applicants.

(b) Money in the housing Montana fund must be disbursed as loans. Twenty percent of the money in the fund must be disbursed to rural areas based on population.

(2) Money deposited in the fund, including money transferred to the account pursuant to section 2, Chapter 502, Laws of 2001, must be used for the program authorized in 90-6-134 and may not be used to pay the expenses of any other program or service administered by the board.

(3) The board may determine the rate of interest to be charged for any loan made under the provisions of 90-6-131 through 90-6-136.

(4) The board may accept contributions, gifts, and grants for deposit into the fund. The money must be used in accordance with the provisions of 90-6-134.

(5) The costs incurred by the board in administering the fund may be paid from the fund.

(6) Interest and principal on loans from the fund must be repaid to the fund.

(7) Interest income generated by investment of the principal of the fund is retained in the fund.

History: En. Sec. 3, Ch. 312, L. 1999; amd. Sec. 1, Ch. 502, L. 2001; amd. Sec. 2, Ch. 455, L. 2003; amd. Sec. 4, Ch. 426, L. 2007; amd. Sec. 1, Ch. 577, L. 2023.

Cross-References

State treasury fund and account structure, 17-2-102.

90-6-134. Housing Montana fund — loan capital restricted to interest on principal — eligible applicants. (1) The money in the housing Montana fund must be used to provide financial assistance in the form of direct loans by the board to eligible applicants.

(2) After the initial principal is loaned to eligible applicants, the amount of loans made in a fiscal year is contingent on the repayment of loan principal and on the amount of interest income generated by the principal of the fund.

(3) Money from the fund must be used to provide:

(a) matching funds for public or private money available from other sources for the development of low-income and moderate-income housing;

(b) bridge financing necessary to make a low-income housing development or a moderate-income housing development financially feasible;

(c) acquisition of existing housing for the purpose of preservation of or conversion to low-income or moderate-income housing;

(d) preconstruction technical assistance to eligible recipients in rural areas and small cities and towns; or

(e) acquisition of land for housing developments, land banking and land trusts, and short-term site-based housing vouchers for needy individuals.

(4) (a) Technical assistance under subsection (3)(d) may include but is not limited to:

(i) financial planning and packaging for housing developments and projects;

(ii) project design, architectural planning, and siting;

(iii) compliance with planning and permitting requirements; or

(iv) maximizing local government contributions to project development in the form of land donations, infrastructure improvements, zoning variances, or creative local planning.

(b) The board may contract with a nonprofit organization to provide this technical assistance.

(5) Money from the fund may not be used to replace existing or available sources of funding for eligible activities.

(6) Organizations eligible for loans from the fund are state government or state agencies or programs, local governments, tribal governments, local housing authorities, nonprofit community- or neighborhood-based organizations, regional or statewide nonprofit housing assistance organizations, or for-profit housing developers.

History: En. Sec. 4, Ch. 312, L. 1999; amd. Sec. 3, Ch. 455, L. 2003; amd. Sec. 5, Ch. 426, L. 2007.

Cross-References

County housing authorities, Title 7, ch. 15, part 21.

General provisions related to municipal housing and construction, Title 7, ch. 15, part 41.

Municipal housing authorities, Title 7, ch. 15, parts 44 and 45.

90-6-135. Coordination with other programs. The board shall ensure that all housing assistance activities supported through the loan program are coordinated with other housing assistance programs administered by the board, the federal government, state agencies, tribal governments, local public housing authorities, and local governments.

History: En. Sec. 5, Ch. 312, L. 1999.

90-6-136. Administrative rules. The board shall adopt rules to implement 90-6-131 through 90-6-137. The rules must address:

(1) the development of eligibility criteria for applicants;

(2) the development of an application process for requesting financial assistance;

(3) the establishment of a procedure for disbursing financial assistance;

(4) the establishment of the terms and conditions of a loan, including the method and schedule of repayment and the applicable rate of interest;

(5) the development of a process for awarding technical assistance contracts; and

(6) other matters necessary for the administration of 90-6-131 through 90-6-137.

History: En. Sec. 6, Ch. 312, L. 1999; amd. Sec. 4, Ch. 460, L. 2019.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

90-6-137. Alternate funding source for housing loans — use of Montana housing trust within Montana growth and opportunity trust. (1) The board of housing shall administer $65 million or more of funds from the Montana housing trust provided for in 90-6-150 for the purpose of providing loans for the development and preservation of homes and apartments to assist eligible low-income and moderate-income applicants. Until the board uses money in the Montana housing trust to loan to a qualified applicant pursuant to this part, the money under the administration of the board must remain invested by the board of investments.

(2) While a loan made from the Montana housing trust pursuant to this section is repaid, the principal payments on the loan must be deposited in the Montana housing trust until all of the principal of the loan is repaid. Interest received on a loan may be used by the board, in amounts determined by the board in accordance with 90-6-136, to pay for the servicing of a

loan and for reasonable costs of the board for administering the program. After payment of associated expenses, interest received on the loan must be deposited in the Montana housing trust.

(3) (a) Money from the Montana housing trust must be used for the purposes identified in 90-6-134(3) and (4).

(b) Loans made pursuant to this section must meet the following requirements:

(i) Projects funded with the loans must be multifamily rental housing projects that provide low-income and moderate-income housing.

(ii) The loan must be in the first lien position and may not exceed 95% of total development costs.

(iii) The board and the loan recipient shall each pay half of loan servicing fees.

(iv) Projects funded with the loans must be subject to property taxes, except those located on tribal lands.

(4) Money from the Montana housing trust may not be used to replace existing or available sources of funding for eligible activities.

(5) Funds administered by the board from the Montana housing trust may not be used to pay the expenses of any other program or service administered by the board.

(6) A multifamily rental housing project eligible to receive a loan under this section may include the development or preservation of a mobile home park as defined in 70-33-103.

History: En. Sec. 1, Ch. 460, L. 2019; amd. Sec. 17, Ch. 774, L. 2023; amd. Sec. 32, Ch. 775, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 32, Ch. 775, L. 2025. Amendment effective June 19, 2025.

90-6-138. Coal board fund. (1) There is a coal board fund administered by the department of administration. Pursuant to 17-5-703, a percentage of coal severance taxes received by the state must be deposited in this fund. Earnings not transferred to the coal natural resource account as provided in subsection (2) must be retained in the coal board fund.

(2) The coal natural resource account established in 90-6-1001(2) receives earnings from the coal board fund as provided in 17-5-703.

History: En. Sec. 3, Ch. 717, L. 2023.

90-6-139 and 90-6-140 reserved.

90-6-141. Short title. Sections 90-6-141 through 90-6-149 may be cited as the "Montana Community Reinvestment Plan Act".

History: En. Sec. 1, Ch. 774, L. 2023.

90-6-142. Purpose. The legislature finds and declares the purpose of the Montana Community Reinvestment Plan Act is to begin to address housing needs and offer a regional, community-based solution to creating affordable, attainable workforce housing infrastructure in the state.

History: En. Sec. 2, Ch. 774, L. 2023.

90-6-143. Definitions. As used in 90-6-141 through 90-6-149, the following definitions apply:

(1) "Attainable workforce housing" means housing of a cost that an eligible household would spend no more than 30% of gross monthly income for a mortgage payment, property taxes, and insurance.

(2) "Community reinvestment organization" means the regional entity or entities established in 90-6-146 or a certified regional development corporation, a certified development corporation, a community housing development organization, an economic development association, or a community development financial institution.

(3) "Community reinvestment organization revolving account" or "CRO revolving account" means a restricted account established by each community reinvestment organization.

(4) "Eligible household" means a household earning between 60% and 140% of median household income for the county in which the person resides or the state, whichever is less.

(5) "Montana community reinvestment plan account" means the account in the state special revenue fund and any subaccounts established pursuant to 90-6-145.

(6) "Program" means the Montana community reinvestment plan.

History: En. Sec. 3, Ch. 774, L. 2023.

90-6-144. Montana community reinvestment plan. There is a Montana community reinvestment plan that enables regional community reinvestment organizations to reduce the cost of housing to an affordable range for Montana's workforce. The program creates a deed-restricted housing inventory that becomes attainable workforce housing infrastructure for employers, employees, and entire communities by distributing money to community reinvestment organizations that invest the funds by buying down the costs of mortgages for eligible households.

History: **En. Sec. 4, Ch. 774, L. 2023.**

90-6-145. Montana community reinvestment plan account. (1) There is an account in the state special revenue fund established by 17-2-102 known as the Montana community reinvestment plan account. The purpose of the account is to fund the establishment of affordable, attainable workforce housing infrastructure in the state.

(2) Money in the account must be distributed by the governor's office of economic development to community reinvestment organizations based on the percentage of the combined county gross domestic product within the regional boundaries of the organization to that of the state gross domestic product.

History: **En. Sec. 5, Ch. 774, L. 2023.**

90-6-146. Community reinvestment organizations. (1) A community reinvestment organization meeting the requirements of 90-6-147 may be established no later than December 31, 2024.

(2) There may be a maximum of 16 community reinvestment organizations in the state.

(3) The geographic boundaries of each community reinvestment organization must be similar to the boundaries determined by the department of commerce for certified regional development corporations provided for in 90-1-116. Regions not included in the described boundaries may establish community reinvestment organizations up to the maximum number allowed in subsection (2). The certified regional development corporation may choose to create and manage a region's community reinvestment organization but is not required to serve as that region's community reinvestment organization.

(4) Counties that are not within the boundaries of an existing certified regional development corporation region may participate in a neighboring community reinvestment organization or create a community reinvestment organization that includes one or more counties not within an existing certified regional development corporation subject to the limit provided in subsection (2).

(5) Each county wishing to participate in the program shall make an affirmative decision to participate by joining a community reinvestment organization. Counties that do not join a community reinvestment organization are ineligible to participate in the program. A county may only participate in one community reinvestment organization.

(6) A participating county is encouraged to enact local ordinances that provide for an expedited development and construction review process with priority for attainable workforce housing.

(7) To be certified by the chief economic development officer provided for in 2-15-219, a community reinvestment organization shall provide the information required by the chief economic development officer and 90-6-147 by January 15, 2025.

History: **En. Sec. 6, Ch. 774, L. 2023; amd. Sec. 24, Ch. 774, L. 2023.**

90-6-147. Community reinvestment organization requirements. (1) A community reinvestment organization shall meet the requirements of this section.

(2) A community reinvestment organization must be established as a federally recognized charitable organization under 26 U.S.C. 501(c)(3), (c)(4), or (c)(6).

(3) (a) Each community reinvestment organization shall create a CRO revolving account for the deposit and distribution of funds to participating counties within the community reinvestment organization's region.

(b) Community reinvestment organizations shall deposit into the CRO revolving account an equal amount of funds as those deposited from the Montana community reinvestment plan account prior to any plan dollars being used to buy down attainable workforce housing.

Community reinvestment organization matching fund options include but are not limited to the use of the employer pool, local government investments, and the utilization of volume cap bonds.

(4) (a) Money in a CRO revolving account must be used as follows:

(i) 95% or more must be distributed to participating counties to be used to assist eligible households in purchasing attainable workforce housing as provided in this section; and

(ii) 5% or less must be dedicated to startup and administrative costs of the community reinvestment organization and may be used to create a foreclosure mitigation set-aside fund.

(b) Money in a CRO revolving account may not be used for preconstruction, development, or construction-related purposes.

(c) If a county elects not to participate in the program under 90-6-141 through 90-6-149, the money allocated to that county must be distributed proportionally to the remaining counties participating in the program within the same region as the nonparticipating county.

(5) An incorporated city, consolidated city-county, or county may contribute funds to its regional CRO revolving account as an optional local government investment.

(6) Money used from the CRO revolving account to assist an eligible household may not exceed 30% of the total purchase price.

(7) Housing purchased using money from the CRO revolving account must have a deed limitation restricting the equitable value to the eligible household. The rate of appreciation on the deed-restricted home may not be greater than 1% a year.

(8) A community reinvestment organization must coordinate local employer participation in a statewide employer pool.

(9) A community reinvestment organization is encouraged to develop policies to support homeowners buying out the deed restriction so the revolving account can be utilized to buy down the cost of additional homes for other eligible households.

History: **En. Sec. 7, Ch. 774, L. 2023.**

90-6-148. State workforce housing incentive to community reinvestment organizations. (1) A community reinvestment organization established in 90-6-146 that contains communities in the county that have a population of 15,000 or less and are located within a 30-mile radius of a state-owned facility that houses at least 100 state inmates or behavioral health patients is eligible to apply for funds from the appropriation provided for in section 20, Chapter 774, Laws of 2023.

(2) (a) The governor's office of economic development shall allocate funds to applying and qualifying counties within community reinvestment organizations proportionally to the average number of state inmates or behavioral health patients in that state-owned facility in the fiscal year beginning July 1, 2021, and the number of employees in that county that work in the state-owned facilities that serve those inmates or patients.

(b) The department of commerce and the board of investments shall assist the governor's office of economic development in the distribution of funds pursuant to this section.

(3) Each community reinvestment organization that receives state workforce housing incentive funds shall create a state workforce housing CRO revolving account for the deposit and distribution of funds to qualifying and participating counties within the community reinvestment organization's region.

(4) (a) Money in a state workforce housing CRO revolving account must be used as follows:

(i) 95% or more must be distributed to qualifying and participating counties to be used to assist eligible households in purchasing attainable workforce housing as provided in this section; and

(ii) 5% or less must be dedicated to startup and administrative costs of the community reinvestment organization and may be used to create a foreclosure mitigation set-aside fund to be held locally.

(b) Money in a state workforce housing CRO revolving account may not be used for preconstruction, development, or construction-related purposes.

(c) If a county elects not to participate in the program under 90-6-141 through 90-6-149, the money allocated to that county must be distributed proportionally to the remaining counties qualifying and participating in the program within the same region as the nonparticipating county.

(5) An incorporated city, consolidated city-county, or county may contribute funds to its state workforce housing CRO revolving account as an optional local government investment or may receive matching funds from the workforce housing appropriation in section 15, Chapter 774, Laws of 2023.

(6) Money used from the state workforce housing CRO revolving account to assist an eligible household may not exceed 30% of the total purchase price.

(7) (a) Housing purchased using money from the state workforce housing CRO revolving account must have a deed limitation restricting the equitable value to the eligible household. The rate of appreciation on the deed-restricted home may not be greater than 1% a year.

(b) Housing purchased using money from the state workforce housing CRO revolving account must have a deed limitation restriction to ensure that a resident of the housing is employed at a state-owned facility that, on an annual average, houses at least 100 state inmates or behavioral health patients and the state-owned facility is located in a county that has a population that does not exceed 15,000 inhabitants.

(8) A community reinvestment organization is encouraged to develop policies to support homeowners buying out the deed restriction so the revolving account can be utilized to buy down the cost of additional homes for other eligible households.

History: En. Sec. 8, Ch. 774, L. 2023.

90-6-149. Use of state trust lands for attainable housing. Where state trust lands are in close proximity to cities, towns, or communities:

(1) the department of natural resources and conservation shall undertake an evaluation of whether the lands could be made available for use as land for potential development of attainable workforce housing as a part of the Montana community reinvestment plan; and

(2) each community reinvestment organization shall consider the use of state lands to support critical public employee services, including attainable workforce housing as part of the Montana community reinvestment plan.

History: En. Sec. 9, Ch. 774, L. 2023.

90-6-150. Montana housing trust. (1) There is a Montana housing trust in the Montana growth and opportunity trust.

(2) The Montana housing trust is comprised of three programs:

(a) the housing Montana fund administered by the board of housing;

(b) the Montana veterans' home loan mortgage program administered by the board of housing; and

(c) the program providing loans for the development and preservation of homes and apartments to assist eligible low-income and moderate-income applicants administered by the board of housing.

(3) The board of housing shall administer $50 million or more of the Montana housing trust for the purposes of the Montana veterans' home loan mortgage program provided for in Title 90, chapter 6, part 6.

(4) The board of housing shall administer $65 million or more of the Montana housing trust for the purpose of providing loans for the development and preservation of homes and apartments to assist low-income and moderate-income persons with meeting their basic housing needs pursuant to 90-6-137.

History: En. Sec. 26, Ch. 775, L. 2025.

Compiler's Comments

Effective Date: Section 46, Ch. 775, L. 2025, provided: "[This act] is effective on passage and approval." Approved June 19, 2025.

90-6-151. Exemption from environmental review. The department and the board of housing are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing loans, administering a loan program, or creating a loan program related to the financing of housing pursuant to this part.

History: En. Sec. 7, Ch. 442, L. 2025.

Compiler's Comments

Effective Date: Section 12, Ch. 442, L. 2025, provided: "[This act] is effective July 1, 2025."

Part 2
Coal Impacts — Evaluation and Abatement Funding

Part Cross-References

Coal severance tax, Art. IX, sec. 5, Mont. Const.; Title 15, ch. 35.
Montana Major Facility Siting Act, Title 75, ch. 20.

90-6-201. Purpose. The purposes of this part are to assist local governmental units that have been required to expand the provision of public services as a consequence of large-scale development of coal mines and coal-using energy complexes or as a consequence of a major decline in coal mining or in the operation of coal-using energy complexes, to assist in the construction and reconstruction of designated portions of highways that serve the area affected by the large-scale development, to support county land planning, and to support public schools throughout the state.

History: En. 50-1701 by Sec. 1, Ch. 502, L. 1975; R.C.M. 1947, 50-1801; amd. Sec. 76, Ch. 509, L. 1995; amd. Sec. 1, Ch. 204, L. 1997.

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.
Allocation of coal severance taxes, 15-35-108.

90-6-202. Account established. There is within the state special revenue fund a coal area highway improvement account.

History: En. 50-1702 by Sec. 2, Ch. 502, L. 1975; R.C.M. 1947, 50-1802; amd. Sec. 47, Ch. 281, L. 1983; amd. Sec. 5, Ch. 662, L. 1987; amd. Sec. 46, Ch. 11, Sp. L. June 1989; amd. Sec. 77, Ch. 509, L. 1995.

Cross-References

Fund structure, 17-2-102.

90-6-203. Definition of coal board. "Board" means the coal board provided for in 2-15-1821.

History: En. 90-6-203 by Code Commissioner, 1979; amd. Sec. 4, Ch. 274, L. 1981.

90-6-204. Presiding officer, meetings, compensation, and facilities. (1) The board shall elect a presiding officer from among its members.

(2) The board shall meet quarterly and may meet at other times as called by the presiding officer or a majority of the members.

(3) Members are entitled to compensation as provided for in 2-15-124(7).

(4) The department of commerce shall provide suitable office facilities and the necessary staff for the coal board.

History: En. 50-1705, 50-1708 by Secs. 6, 9, Ch. 502, L. 1975; R.C.M. 1947, 50-1805, 50-1808; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 2874, Ch. 56, L. 2009.

90-6-205. Coal board — general powers. The board may:

(1) retain professional consultants and advisors;

(2) adopt rules governing its proceedings;

(3) consider applications for grants from available funds;

(4) award grants, subject to 90-6-207, from available funds:

(a) to local governmental units, state agencies, and governing bodies of federally recognized Indian tribes to assist local governmental units and federally recognized Indian tribes in meeting the local impact of coal development or a major decline in coal mining or in the operation of coal-using energy complexes by enabling them to adequately provide governmental services and facilities that are needed as a direct consequence of an increase or decrease in coal development or in the consumption of coal by a coal-using energy complex; and

(b) notwithstanding the provisions of 90-6-207, to the department of transportation, established in 2-15-2501, to expedite the construction, repair, and maintenance of deficient sections of highway within the area designated in 90-6-210 if the deficiency is the direct result of increased traffic accompanying the development of coal resources; and

(5) award a grant to a local governmental unit for the purpose of paying for part or all of the credit that the local governmental unit is obligated to give to a major new industrial facility that has prepaid property taxes under 15-16-201. The board shall award the grant in accordance with 90-6-206.

History: En. 50-1706 by Sec. 7, Ch. 502, L. 1975; amd. Sec. 3, Ch. 540, L. 1977; R.C.M. 1947, 50-1806(part); (6)En. Sec. 1, Ch. 250, L. 1983; amd. Sec. 1, Ch. 690, L. 1983; amd. Sec. 1, Ch. 619, L. 1985; amd. Sec. 2, Ch. 715, L. 1985; amd. Sec. 2, Ch. 733, L. 1985; amd. Sec. 2, Ch. 5, Sp. L. June 1986; amd. Sec. 2, Ch. 19, Sp. L. June 1986; amd. Sec. 6, Ch. 662, L. 1987; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 78, Ch. 509, L. 1995; amd. Sec. 2, Ch. 204, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Allocation of severance taxes, 15-35-108.
Fund structure, 17-2-102.
Indian affairs — legislative policy, 90-11-101.

90-6-206. Basis for awarding grants. (1) Grants must be awarded on the basis of:

(a) need;

(b) degree of severity of impact from an increase or decrease in coal development or in the consumption of coal by a coal-using energy complex;

(c) availability of funds; and

(d) degree of local effort in meeting these needs.

(2) In determining the degree of local effort, the board shall review the millage rates levied for the present fiscal year in relation to the average millage rates levied during the 3 years immediately preceding the year of application for assistance.

(3) Millage rates for the present fiscal year that are lower than the average millage rate levied during the 3 years immediately preceding the year of application for assistance must be considered by the board to indicate the lack of local effort. The application under these circumstances may be rejected.

(4) Further, in determining the degree of local effort, the board shall consider the possibility of requiring that local governmental unit to increase its bonded indebtedness to provide all or part of the governmental service or facility that is needed as a direct consequence of an increase or decrease in coal development or in the consumption of coal by a coal-using energy complex.

(5) To the extent that funds are needed to evaluate and plan for the impact needs caused by the increase or decrease in coal development or in the consumption of coal by a coal-using energy complex, consideration of bond issues and millage levies may be waived.

(6) To the extent that the applicant has no history of mill levies, subsections (2) and (3) do not apply.

History: En. 50-1706 by Sec. 7, Ch. 502, L. 1975; amd. Sec. 3, Ch. 540, L. 1977; R.C.M. 1947, 50-1806(part); amd. Sec. 1, Ch. 619, L. 1979; amd. Sec. 2, Ch. 690, L. 1983; amd. Sec. 3, Ch. 204, L. 1997.

Cross-References

Authorization for county mill levy, 7-6-2501.
Authorization for tax levy and collection by municipality, 7-6-4421.

90-6-207. Priorities for impact grants. (1) The department of commerce shall biennially designate:

(a) each county, incorporated city and town, school district, and other governmental unit that has had or expects to have as a result of the impact of coal development a net increase or decrease in estimated population of at least 10% over one of the 3-year periods specified in subsection (4);

(b) each county and all local governmental units within each county in which:

(i) a mining permit in accordance with the Montana Strip and Underground Mine Reclamation Act has been granted by the department of environmental quality for a project within the county that will establish a new coal mine to produce at least 300,000 tons a year and that the department of commerce determines will commence production within 2 years;

(ii) the department of commerce has determined that the production of an existing mine will increase or decrease by at least 1 million tons a year and that the new, expanded, or reduced production will commence within 2 years of the designation;

(iii) a newly constructed railroad serves a new, existing, or expanding coal mine; or

(iv) an air quality permit has been issued by the department of environmental quality for a new steam-generating or other new coal-burning facility that will consume at least 1 million tons a year of Montana-mined coal and for which the department of commerce determines the construction or operation will commence within 2 years of the designation;

(c) each local governmental unit located within 100 miles, measured over the shortest all-weather public road, of a mine or facility qualifying under subsection (1)(b)(i), (1)(b)(ii), or (1)(b)(iv); and

(d) each local governmental unit in which:

(i) a mine that has produced 300,000 tons or more of coal a year has ceased all significant mining or is scheduled to cease within 1 year; or

(ii) a steam-generating or other coal-burning facility that has operated under an air quality permit issued by the department of environmental quality and that has consumed at least 1 million tons of Montana-mined coal a year has closed or is scheduled to close within 1 year.

(2) Designation under subsection (1) of:

(a) any local governmental unit extends to and includes as a designated unit the county in which it is located; and

(b) a county extends to and includes as a designated unit any local governmental unit in the county that contains at least 10% of the total population of the county.

(3) Except as provided in 90-6-205(4)(b), the board may not award more than 50% of the funds appropriated to it each year for grants to governmental units and state agencies for meeting the needs caused by an increase or decrease in coal development or in the consumption of coal by a coal-using energy complex to local governmental units other than those governmental units designated under subsection (1).

(4) For the purposes of subsection (1), the department of commerce shall use five 3-year periods as follows:

(a) one consecutive 3-year period ending 2 calendar years prior to the current calendar year;

(b) one consecutive 3-year period ending 1 calendar year prior to the current calendar year;

(c) one consecutive 3-year period ending with the current calendar year;

(d) one consecutive 3-year period ending 1 calendar year after the current calendar year; and

(e) one consecutive 3-year period ending 2 calendar years after the current calendar year.

(5) Attention should be given by the board to the need for community planning before the full impact is realized. Applicants should be able to show how their request reasonably fits into an overall plan for the orderly management of the existing or contemplated growth or decline problems.

(6) All funds appropriated under this part are for use related to local impact.

(7) All designations based on an increase in coal development or in the consumption of coal by a coal-using energy complex made under subsection (1)(a), (1)(b), or (1)(c) must be for 1 year. A designation may not continue after the department of commerce determines that the mine, railroad, or facility that provided the basis for a designation is contributing sufficient tax revenue to the designated governmental unit to meet the increased costs of providing the services necessitated by the development of the mine, railroad, or facility. However, nondesignated local governmental units continue to be eligible for coal impact grants of not more than 50% of the funds appropriated to the board for grants in circumstances in which an impact exists in a community or area directly affected by:

(a) the operation of a coal mine or a coal-using energy complex; or

(b) the cessation or reduction of coal mining activity or of the operation of a coal-using energy complex.

History: En. 50-1707 by Sec. 8, Ch. 502, L. 1975; R.C.M. 1947, 50-1807; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 1, Ch. 142, L. 1983; amd. Sec. 1, Ch. 462, L. 1985; amd. Sec. 2, Ch. 619, L. 1985; amd. Sec. 7, Ch. 662, L. 1987; amd. Sec. 1, Ch. 503, L. 1993; amd. Sec. 495, Ch. 418, L. 1995; amd. Sec. 79, Ch. 509, L. 1995; amd. Sec. 4, Ch. 204, L. 1997; amd. Sec. 18, Ch. 217, L. 2003.

Cross-References

Department of Commerce, 2-15-1801.

Montana Major Facility Siting Act, Title 75, ch. 20.

The Montana Strip and Underground Mine Reclamation Act, Title 82, ch. 4, part 2.

Functions of Department of Commerce — state planning, 90-1-102.

90-6-208. Applications for grants. The governing body of a city, town, county, or school district, any other local or state governmental unit or agency, or the governing body of a federally recognized Indian tribe may apply for a grant to enable it to provide governmental services that are needed as a direct consequence of an increase or decrease of coal development or of an increase or decrease in the consumption of coal by a coal-using energy complex. The board shall prescribe the form for applications. Applicants shall describe the nature of their proposed expenditures and the time involved.

History: En. 50-1709 by Sec. 10, Ch. 502, L. 1975; R.C.M. 1947, 50-1809(part); amd. Sec. 3, Ch. 690, L. 1983; amd. Sec. 5, Ch. 204, L. 1997.

90-6-209. Limitations on grants. (1) The board may commit itself to the expenditure of funds for more than 1 year for a single project, but the board may not obligate funds not yet appropriated by the legislature. The total amount of grants to state agencies, except grants made pursuant to 90-6-205(4)(b), and Indian tribes may not exceed 7% of the total money allocated to the board during each fiscal year.

(2) A grant to an Indian tribe under 90-6-205 may not be approved by the board unless:

(a) the governing body of the tribe has agreed:

(i) to waive its immunity from suit on any issue specifically arising from the transaction of a grant obtained under this part; and

(ii) to the adjudication of any dispute arising out of the grant transaction in the district court of the first judicial district of the state of Montana; and

(b) approval of the transaction has been obtained from the secretary of the United States department of the interior whenever approval is necessary.

(3) (a) The board may not award a new grant to a local government that is in violation of 2-1-602 pursuant to the provisions of 2-1-605.

(b) For the purposes of this subsection (3), "local government" has the meaning provided in 2-1-601.

History: En. 50-1709 by Sec. 10, Ch. 502, L. 1975; R.C.M. 1947, 50-1809(part); amd. Sec. 4, Ch. 690, L. 1983; (2) En. Sec. 5, Ch. 690, L. 1983; (3) En. Sec. 6, Ch. 690, L. 1983; amd. Sec. 1, Ch. 420, L. 1985; amd. Sec. 3, Ch. 619, L. 1985; amd. Sec. 6, Ch. 204, L. 1997; amd. Sec. 7, Ch. 101, L. 2021.

Cross-References

Jurisdiction on Indian lands, Title 2, ch. 1, part 3.

90-6-210. Coal area highway reconstruction program. (1) The department of transportation, within the area designated as the eastern Montana coal field economic growth center as certified to the secretary of transportation by the governor under 23 U.S.C. 143, shall prepare a special construction program for the reconstruction of deficient sections of these highways in consultation with the governing bodies of the counties in the area.

(2) The department of transportation shall expedite the planning and reconstruction program for projects on the designated portions within this area by using funds allocated under this section and any federal funds that may be made available to match those funds. Until federal funds are made available to match the funds allocated under this section, the department of transportation may, upon approval of the Montana state transportation commission, expend funds for planning and reconstruction projects with or without assurance from the federal government that unmatched state expenditures will be retroactively recognized for matching purposes.

(3) Funds allocated under this section may not be used to match apportionments made for primary and secondary highway systems, as those terms are defined in 60-1-103; however, this section may not be construed to prohibit the implementation of projects otherwise funded by apportionments made under 60-3-205 or 60-3-206. In addition, planning and reconstruction projects may be financed in whole or in part by public and private funds provided that the projects conform to the applicable standards, regulations, and procedures of the department of transportation and the federal highway administration.

History: En. 50-1703 by Sec. 4, Ch. 502, L. 1975; amd. Sec. 2, Ch. 540, L. 1977; R.C.M. 1947, 50-1803(2) thru (4); amd. Sec. 1, Ch. 542, L. 1981; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 6, Ch. 75, L. 1995; amd. Sec. 312, Ch. 42, L. 1997; amd. Sec. 38, Ch. 299, L. 2019.

Cross-References

Federal-aid funds, Title 60, ch. 3, part 1.
Purpose, 90-6-201.
Accounts established — coal area highway improvement account, 90-6-202.

90-6-211. Repealed. Sec. 94, Ch. 11, Sp. L. June 1989.

History: En. 50-1710 by Sec. 11, Ch. 502, L. 1975; R.C.M. 1947, 50-1810; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 384, L. 1983; amd. Sec. 26, Ch. 658, L. 1987; amd. Sec. 8, Ch. 662, L. 1987.

90-6-212. Repealed. Sec. 7, Ch. 204, L. 1997.

History: En. Sec. 9, Ch. 662, L. 1987; amd. Sec. 47, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 503, L. 1993; amd. Sec. 80, Ch. 509, L. 1995.

90-6-213. Exemption from environmental review. The coal board is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing grants related to providing government services and facilities, expediting the construction, repair, and maintenance of a highway, or paying for prepaid property taxes for a major new industrial facility pursuant to this part.

History: En. Sec. 2, Ch. 113, L. 2023.

Part 3
Hard-Rock Mining Impact

Part Cross-References

Duty to notify weed management district when proposed project will disturb land, 7-22-2152.
Allocation of metalliferous mines license tax, 15-37-117.
Mining generally, Title 82, ch. 2.
Reclamation, Title 82, ch. 4.

90-6-301. Declaration of necessity and purpose. The large-scale development of mineral deposits in the state may cause an influx of people directly related to the area of the development. This influx of people and the corresponding increase in demand for local government facilities and services may create a burden on the local taxpayer. There is a significant lag time between the time when additional facilities and services must be provided and the time when additional tax revenue is available as a result of the increased tax base. In addition, local government units in whatever jurisdiction the development is not located may receive substantial adverse economic impacts without benefit of a major increased tax base in the future. There is therefore a need to provide a system to assist local government units in meeting the initial financial impact of large-scale mineral development.

History: En. Sec. 2, Ch. 617, L. 1981; amd. Sec. 2, Ch. 311, L. 1987.

Cross-References

Montana Environmental Policy Act, Title 75, ch. 1.
Montana Major Facility Siting Act, Title 75, ch. 20.

90-6-302. Definitions. In this part, the following definitions apply:

(1) "Board" means the hard-rock mining impact board established in 2-15-1822.

(2) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness or evidencing or representing the borrowing of money or evidencing or representing a charge, lien, or encumbrance on specific revenue, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(3) "Facility" means a facility that is owned, operated, or maintained by a local government unit and that, under the impact plan submitted under the provisions of 90-6-307, can be expected to have increased capital and operating costs as a result of the large-scale mineral development.

(4) "Large-scale mineral development" means the construction or operation of a hard-rock mine and the associated milling facility for which a permit is applied for under 82-4-335, and for which the average number of persons on the payroll of the mineral developer and of contractors at the mineral development exceeds or is projected to exceed 75 for any consecutive 6-month period. A mining operation that would qualify as a large-scale mineral development under this subsection is not a large-scale mineral development if the mine owner and operator are small miners as defined in 82-4-303.

(5) "Local government unit" means a county, city, town, school district, or any of the following independent special districts:

(a) rural fire district;

(b) public hospital district;

(c) solid waste management district;
(d) county water and sewer district;
(e) county water district;
(f) county sewer district; or
(g) park district.

(6) (a) "Property tax prepayment" means a potentially reimbursable impact payment made by the developer of a large-scale mineral development to the impact fund of an affected unit of local government pursuant to an approved impact plan to be expended for the purpose or purposes identified in the plan.

(b) The term does not mean a payment or prepayment of property taxes for general distribution among funds or accounts.

History: **En. Sec. 3, Ch. 617, L. 1981; amd. Sec. 8, Ch. 453, L. 1985; amd. Sec. 4, Ch. 582, L. 1985; amd. Sec. 1, Ch. 227, L. 1991; amd. Sec. 2, Ch. 464, L. 1999; amd. Sec. 82, Ch. 7, L. 2001.**

90-6-303. Presiding officer — meetings — facilities — funding. (1) The board shall elect a presiding officer from among its members.

(2) The board shall meet as necessary or as called by the presiding officer or a majority of the members.

(3) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121.

(4) The administrative and operating expenses of the board must be paid from revenue deposited to the credit of the hard-rock mining impact trust account from the license tax on metal mines imposed under Title 15, chapter 37.

History: **En. Sec. 4, Ch. 617, L. 1981; amd. Sec. 7, Ch. 619, L. 1983; amd. Sec. 2875, Ch. 56, L. 2009.**

90-6-304. *(Temporary)* **Accounts established.** (1) There is within the state custodial fund type a hard-rock mining impact account. Money is payable into this account from payments made by a mining developer in compliance with the written guarantee from the developer to meet the increased costs of public services and facilities as specified in the impact plan provided for in 90-6-307. The state treasurer shall draw warrants from this account upon order of the board.

(2) There is within the state special revenue fund a hard-rock mining impact trust account. Within this trust account, there is established a reserve amount not to exceed $100,000.

(a) Money within the hard-rock mining impact trust account may be used:
(i) for the administrative and operating expenses of the board, as provided by 90-6-303(4);
(ii) to establish and maintain the reserve amount; and
(iii) for distribution to the counties of origin, as provided by 90-6-331 and this section.

(b) Money within the hard-rock mining impact trust account may be used for the administrative and operating expenses of the board if:
(i) the revenue provided under 15-37-117(1)(b) is less than the amount appropriated for the administrative and operating expenses of the board; or
(ii) the use of the reserve amount of revenue is necessary to allow the board to meet its quasi-judicial responsibilities under 90-6-307, 90-6-311, or 90-6-403(3).

(3) Money is payable into the hard-rock mining impact trust account under the provisions of 15-37-117. After first deducting the administrative and operating expenses of the board, as provided in 90-6-303, and then establishing and maintaining the reserve amount of $100,000, as provided in subsection (2) of this section, the remaining money must be segregated within the account by county of origin. *(Terminates June 30, 2035—sec. 1, Ch. 181, L. 2025, sec. 3, Ch. 181, L. 2025.)*

90-6-304. *(Effective July 1, 2035)* **Accounts established.** (1) There is within the state custodial fund type a hard-rock mining impact account. Money is payable into this account from payments made by a mining developer in compliance with the written guarantee from the developer to meet the increased costs of public services and facilities as specified in the impact plan provided for in 90-6-307. The state treasurer shall draw warrants from this account upon order of the board.

(2) There is within the state special revenue fund a hard-rock mining impact trust account. Within this trust account, there is established a reserve amount not to exceed $100,000.

(a) Money within the hard-rock mining impact trust account may be used:
(i) for the administrative and operating expenses of the board, as provided by 90-6-303(4);
(ii) to establish and maintain the reserve amount; and
(iii) for distribution to the counties of origin, as provided by 90-6-331 and this section.

(b) Money within the hard-rock mining impact trust account may be used for the administrative and operating expenses of the board if:

(i) the revenue provided under 15-37-117(1)(b) is less than the amount appropriated for the administrative and operating expenses of the board; or

(ii) the use of the reserve amount of revenue is necessary to allow the board to meet its quasi-judicial responsibilities under 90-6-307, 90-6-311, or 90-6-403(3).

(3) Money is payable into the hard-rock mining impact trust account under the provisions of 15-37-117. After first deducting the administrative and operating expenses of the board, as provided in 90-6-303, and then establishing and maintaining the reserve amount of $100,000, as provided in subsection (2) of this section, the remaining money must be segregated within the account by county of origin. The state treasurer shall draw warrants from this account upon order of the board.

History: En. Sec. 5, Ch. 617, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 8, Ch. 619, L. 1983; amd. Sec. 14, Ch. 672, L. 1989; amd. Sec. 1, Ch. 616, L. 1991; amd. Sec. 55, Ch. 349, L. 1993; amd. Sec. 36, Ch. 389, L. 1999; amd. Sec. 4, Ch. 598, L. 2005; amd. Sec. 2, Ch. 442, L. 2009; amd. Sec. 9, Ch. 185, L. 2019.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 181, L. 2025, and sec. 3, Ch. 181, L. 2025, amended sec. 5, Ch. 442, L. 2009, and sec. 1, Ch. 213, L. 2017, by extending the termination dates imposed by those sections to June 30, 2035. Effective October 1, 2025.

Cross-References

Fund structure, 17-2-102.
Warrants, Title 17, ch. 8, part 3.
Hard-rock mining account, 82-4-311.
Fund transfer, 90-6-331.

90-6-305. Hard-rock mining impact board — general powers. (1) The board may:

(a) retain professional staff, including its administrative staff, and retain consultants and advisers, notwithstanding the provisions of 2-15-121;

(b) adopt rules governing its proceedings, determinations, and administration of this part;

(c) make payments to local government units from money paid to the hard-rock mining impact account as provided in 90-6-307;

(d) make determinations as provided in 90-6-307, 90-6-311, and 90-6-403(3); and

(e) accept grants and other funds to be used in carrying out this part.

(2) The provisions of the Montana Administrative Procedure Act apply to the proceedings and determinations of the board.

History: En. Sec. 6, Ch. 617, L. 1981; amd. Sec. 2, Ch. 489, L. 1983; amd. Sec. 9, Ch. 619, L. 1983; amd. Sec. 15, Ch. 672, L. 1989; amd. Sec. 1, Ch. 376, L. 1991; amd. Sec. 11, Ch. 307, L. 2001.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.
Adoption and publication of rules, Title 2, ch. 4, part 3.

90-6-306. Repealed. Sec. 12, Ch. 307, L. 2001.

History: En. Sec. 7, Ch. 617, L. 1981; amd. Sec. 10, Ch. 619, L. 1983; amd. Sec. 16, Ch. 672, L. 1989.

90-6-307. Impact plan to be submitted. (1) After an application for a permit for a large-scale mineral development is made under 82-4-335, the person seeking the permit shall submit to the affected counties and the board an impact plan describing the economic impact the large-scale mineral development will have on local government units and shall file proof of the submission to the counties with the board. Whenever an environmental impact statement on the permit application is prepared under 75-1-201, the lead agency shall cooperate to the fullest extent practicable with the affected local government units to eliminate duplication of effort in data collection. The governing bodies of the affected counties shall publish notice of the submission of an impact plan at least once in a newspaper of general circulation in the county. The mineral developer and the affected local government units shall ensure that the impact plan includes:

(a) a timetable for development, including the opening date of the development and the estimated closing date;

(b) the estimated number of persons coming into the impacted area as a result of the development;

(c) the increased capital and operating cost to local government units for providing services that can be expected as a result of the development;

(d) the financial or other assistance that the developer will give to local government units to meet the increased need for services.

(2) In the impact plan, the developer shall commit itself to pay all of the increased capital and net operating cost to local government units that will be a result of the development, as identified in the impact plan, whether from tax prepayments, as provided in 90-6-309, special industrial local government facility impact bonds, as provided in 90-6-310, or other funds obtained from the developer, and shall provide a time schedule within which it will do so. The plan may provide for funding from other revenue sources or funding mechanisms if the developer guarantees that the amount to be provided from these sources will be paid.

(3) Upon request of the governing body of an affected unit of local government, the mineral developer, prior to the end of the 90-day review period, shall provide financial or other assistance as necessary to prepare for and evaluate the impact plan. The governing body of the affected county shall contract with the developer to obtain the requested financial assistance for each unit of local government within the county. Any disbursements to a unit of local government under this subsection must be credited against future tax liabilities, if any.

(4) The governing body of the county where the fiscal impacts on local government units are forecasted in the impact plan to be most costly shall, within 90 days after receipt of the impact plan from the developer, conduct a public hearing on the impact plan.

(5) An affected local government unit that has not been identified in an impact plan submitted to the board as being likely to experience increased capital and operating costs for providing services that can be expected as a result of the development may object to the impact plan under the provisions of this section if the local government unit clearly demonstrates that it is likely to experience increased capital and operating costs from the mineral development.

(6) An affected local government unit shall, within 90 days after receipt of the impact plan from the developer, notify the board in writing if that local government unit objects to the impact plan, specifying the reasons for the objection. During the 90-day period, an affected local government unit may petition for one 30-day extension by submitting a written request to the board stating the need and justification for the extension. The board shall grant the extension unless it finds that there is no reasonable basis for the request. If an objection is not received within the 90-day period or any extension of the period, the impact plan is approved without any review by the board. An approved plan is binding and may only be altered under the amendment provisions of 90-6-311.

(7) If objections are received from a local government unit, the board shall, within 10 days, notify the developer and forward a copy of the local government unit's objections to the developer. The local government unit and the developer have 30 days, or a longer period if both the local government unit and the developer request an extension, to resolve the objection. If the objections are not resolved, the board shall conduct a hearing on the validity of the objections. The hearing must be held in the affected county or, if objections are received from local government units in more than one county, must be held in the county which, in the board's judgment, is more greatly affected. The provisions of the Montana Administrative Procedure Act apply to the conduct of the hearing. The impact plan filed by the developer does not carry a presumption of correctness at the hearing.

(8) Following the hearing, the board shall, within 60 days, make findings as to those portions of the impact plan that were objected to and, if appropriate, amend the impact plan accordingly. The findings and impact plan, as amended, must be served by the board upon all parties. A local government unit or the developer, if aggrieved by the decision of the board, is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court in and for the judicial district in which the hearing was held.

(9) The developer shall, within 30 days of receipt of the approved impact plan, provide the board with a written guaranty that the developer will meet the increased costs of public services and facilities as specified in the approved impact plan and according to the time schedule contained in the approved impact plan.

(10) The developer may make payments as specified in the approved impact plan directly to a local government unit or to the board. The governing body of a local government unit receiving payments shall deposit the payments into an impact fund. The developer and the affected governing body shall each issue to the board written verification of each payment and its intended use in compliance with the impact plan. The board shall deposit payments received from a developer into the hard-rock mining impact account established by 90-6-304.

(11) The board shall notify the department of environmental quality of its receipt of the written guaranty of payment and of any failure of the developer to comply with this section.

(12) Upon receipt of evidence that an affected local government unit identified in the approved impact plan is providing or is preparing to provide an additional service or facility provided for in the approved impact plan, the board shall, if the hard-rock mining impact account is used to deliver payments to the local government unit, pay to that local government unit, in one sum or in parts, the money from the hard-rock mining impact account identified in the plan as the increased cost to the local government unit of providing that public service or facility.

(13) If it is determined that an objection filed by an affected local government unit under subsections (5) and (6) or 90-6-311(3) is valid and it results in some remedial order by the board or court of competent jurisdiction, the local government unit must be awarded and the developer shall pay reasonable costs and attorney fees associated with any administrative or judicial appeals filed under this section. Any attorney fees and costs awarded are in addition to any amounts paid by the developer under this part.

(14) Upon a determination by the department of environmental quality that a permittee under 82-4-335 has become or will become a large-scale mineral developer, the permittee may petition the board for a waiver of the impact plan requirement. The board may grant a waiver or conditional waiver of this requirement only if it has provided notice and opportunity for hearing to the permittee and to all affected local government units. The board shall adopt criteria under which a waiver may be granted. A waiver issued by the board may be revoked as provided in the conditional waiver or if the permittee and contractors at the mineral development increase their payrolls from the date of the waiver by 75 or more persons. However, any revocation must be requested by an affected local government unit, and notice and opportunity for hearing must be given to the permittee and all affected local government units. The board shall notify the board of land commissioners of any waiver that has been revoked.

(15) When a person who holds an operating permit under 82-4-335 and who has filed an impact plan fails to comply with the review and implementation requirements in this part and part 4 of this chapter, the board shall certify to the board of land commissioners that the failure to comply has occurred and shall certify when a permittee who has previously failed to comply comes into compliance.

History: **En. Sec. 8, Ch. 617, L. 1981; amd. Sec. 3, Ch. 489, L. 1983; amd. Sec. 4, Ch. 24, L. 1985; amd. Sec. 5, Ch. 582, L. 1985; amd. Sec. 3, Ch. 311, L. 1987; amd. Sec. 7, Ch. 227, L. 1991; amd. Sec. 496, Ch. 418, L. 1995.**

Cross-References

Notice — actual and constructive, 1-1-217.
Requirements for compliance with notice provisions, 2-3-104.
Open meetings, Title 2, ch. 3, part 2.
Hearing — rules of evidence, cross-examination, and judicial notice, 2-4-612.
Local government — general provisions related to services, Title 7, ch. 11.
Local government — utility services, Title 7, ch. 13.
Local government — culture, social services, and recreation, Title 7, ch. 16.
Local government — general emergency and protective services, Title 7, ch. 31.
Allowable costs, Title 25, ch. 10, part 2.
Attorney fees, Title 25, ch. 10, part 3.

90-6-308. Permit procedure and review of impact plan to run concurrently. It is intended that the procedure for fulfilling the permit requirement of 82-4-335 and the review of the impact plan by the board under 90-6-307(5) and (6), if review occurs, are to run concurrently.

History: **En. Sec. 9, Ch. 617, L. 1981; amd. Sec. 4, Ch. 311, L. 1987.**

90-6-309. Tax prepayment — large-scale mineral development. (1) After permission to commence operation is granted by the appropriate governmental agency and upon request of the governing body of a county in which a facility is to be located, a person intending to construct or locate a large-scale mineral development in this state shall prepay property taxes as specified in the impact plan. This prepayment must exclude the 6-mill university levy established under 15-10-109 and may exclude the mandatory county levies for the school BASE funding program established in 20-9-331 and 20-9-333.

(2) The person who is to prepay under this section is not obligated to prepay the entire amount established in subsection (1) at one time. Upon request of the governing body of an affected local government unit, the person shall prepay the amount shown to be needed from time to time as determined by the board.

(3) The person who is to prepay shall guarantee to the hard-rock mining impact board, through an appropriate financial institution, as may be required by the board, that property tax prepayments will be paid as needed for expenditures created by the impacts of the large-scale mineral development.

(4) When the mineral development facilities are completed and assessed by the department of revenue, they are subject during the first 3 years and thereafter to taxation as all other property similarly situated, except that in each year after the start of production, the local government unit that received a property tax prepayment shall provide for repayment of prepaid property taxes in accordance with subsection (5).

(5) A local government unit that received all or a portion of the property tax prepayment under this section shall provide for tax crediting as specified in the impact plan. The tax credit allowed in any year may not, however, exceed the tax obligation of the developer for that year, and the time period for tax crediting is limited to the productive life of the mining operation.

History: En. Sec. 10, Ch. 617, L. 1981; amd. Sec. 4, Ch. 489, L. 1983; amd. Sec. 6, Ch. 582, L. 1985; amd. Sec. 48, Ch. 11, Sp. L. June 1989; amd. Sec. 55, Ch. 633, L. 1993; amd. Sec. 7, Ch. 57, L. 2009; amd. Sec. 39, Ch. 3, L. 2019.

Cross-References

Property tax levies, Title 15, ch. 10.
Tax prepayment — new industrial facilities, 15-16-201.

90-6-310. Local government facility impact bonds. (1) When the need for the construction, renovation, improvement, or acquisition of local government facilities as a result of the large-scale mineral development is determined under 90-6-307, the owners of a large-scale mineral development may enter into a written agreement with the local government unit having the burden for the increased capital and operating costs expected to be incurred by the facilities. The local government unit may execute a written agreement with the owner of a large-scale mineral development for the issuance of any special industrial local government facility impact bonds provided for in this section.

(2) The agreement with the owners of a large-scale mineral development must provide for a payment guarantee through a third-party financial institution, in addition to the taxes imposed by the local government unit on property owners generally, of the principal and interest on the bonds provided for in this section. Payment will then be made by an annual special tax levy on the property of the large-scale mineral development sufficient to retire the principal and interest on these special impact bonds. The bonds may not be an obligation of the local government unit, but must be special obligations limited to the revenue derived from the special tax levy. A local government unit shall establish a levy and, to the extent bonds are issued as provided in this section, shall pledge the special fund and all revenue of the special tax levy to the repayment of the bonds.

(3) The debt limits set forth in 7-7-2203, 7-7-4201, and 20-9-406 do not apply to bonds issued in accordance with this section. The interest on the bonds is not subject to state taxes.

(4) The impact bonds must be authorized by the governing body of the local government unit by a resolution that states:

(a) the facility for which the bonds are issued;
(b) the amount of the bonds;
(c) the rate of interest the bonds bear;
(d) the date of the bonds and the maturity date or dates of the bonds;
(e) the dates interest is payable on the bonds;
(f) the redemption options, if any, with respect to the bonds; and
(g) the manner of execution of the bonds.

(5) The impact bonds must be:

(a) in registered form as to principal and interest;

(b) payable in installments and at times not exceeding 30 years from their date of issuance; and

(c) payable at a place or places and be evidenced in a manner the governing body determines is in the best interest of the local government unit.

(6) Any impact bonds issued under the authority of this section may be sold at public or private sale in a manner, at a time or times, and at a price above or below par as may be determined by the governing body of the local government unit. All expenses, premiums, and commissions that the local government unit considers necessary or advantageous in connection with the authorization, sale, and issuance of the bonds may be paid by the governing body of the local government unit from the proceeds of the sale of the bonds.

(7) If more than one local government unit adopts a resolution to issue impact bonds, the local government units may enter into an interlocal agreement under 7-11-101 through 7-11-105, 7-11-107, and 7-11-108, providing for the issue of impact bonds of the local government units to be combined in a single offering, if the governing body of each local government unit authorizing the bonds determines that the pooling of bonds:

(a) is in the best interest of the local government units;

(b) will facilitate the sale of the bonds under more advantageous terms;

(c) will lower the interest rates; or

(d) will lower the cost of issuance.

(8) In addition to the specific requirements of 7-11-105, the interlocal agreement must provide:

(a) that the bond titles must denote that impact bonds of different local government units have been pooled and must refer to each local government unit executing the interlocal agreement;

(b) for a single debt service fund, to be held by a qualified trust company, to which each local government unit shall pledge and pay the annual special tax levies levied against the large-scale mineral development; and

(c) that the bonds are payable solely from and against the debt service funds under the interlocal agreement.

History: **En. Sec. 11, Ch. 617, L. 1981; amd. Sec. 2, Ch. 227, L. 1991; amd. Sec. 3, Ch. 464, L. 1999.**

Cross-References

Bond issues, Title 17, ch. 5.

School district bond issues for certain purposes, 20-9-403.

School district bonds — purpose and authorization of building reserve fund by election, 20-9-502.

90-6-311. Impact plan amendments. (1) The impact plan may provide for amendment under definite conditions specified in the plan. Also, the governing body of an affected county or the mineral developer may petition the board for an amendment to an approved impact plan if:

(a) employment at the large-scale mineral development is forecast to increase or decrease by at least 75 persons, as determined under 90-6-302(4), over or under the employment levels contemplated by the approved impact plan; or

(b) it becomes apparent that an approved impact plan is materially inaccurate because of errors in assessment and 2 years have not elapsed since the date the facility begins commercial production; or

(c) the governing body of an affected county and the mineral developer join in a petition to amend the impact plan.

(2) Within 10 days of receipt the board shall publish notice of the petition at least once in a newspaper of general circulation in the affected county. The petition must include:

(a) an explanation of the need for an amendment;

(b) a statement of the facts and circumstances underlying the need for an amendment; and

(c) a description of the corrective measures proposed by the petitioner.

(3) Within 60 days after notice that the petition has been received, an affected local government unit or the mineral developer must notify the board in writing if such person objects to the amendments proposed by the petitioner, specifying the reasons why the impact plan should not be amended as proposed. If no objection is received within the 60-day period, the impact plan must be amended by the board as proposed by the petitioner.

(4) If an objection is received, within 10 days of its receipt, the board shall notify the petitioner and include a copy of all objections received by the board. If the objecting party and the petitioner cannot resolve the objections within 30 days after the expiration of the 60-day period, the board shall conduct a hearing on the validity of the objections within 30 days after the failure of the parties to resolve the objections. The hearing must be held in the affected county or, if objections are received from local government units in more than one county, must be held in the county which in the board's judgment is more greatly affected. The provisions of the Montana Administrative Procedure Act apply to the conduct of the hearing.

(5) Following the hearing, the board shall make findings as to those portions of the amendments which were objected to and, if appropriate, amend the impact plan accordingly. The board shall cause the findings and impact plan, as amended, to be served on all parties. Any local government unit or the developer is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court for the judicial district in which the hearing was held.

History: En. Sec. 5, Ch. 489, L. 1983; amd. Sec. 7, Ch. 582, L. 1985; amd. Sec. 6, Ch. 227, L. 1991.

Cross-References

Notice and opportunity to be heard, Title 2, ch. 3, part 1.
Contested cases — informal hearings, 2-4-603.
Contested cases — hearing, 2-4-612.

90-6-312 through 90-6-320 reserved.

90-6-321. Repealed. Sec. 21, Ch. 672, L. 1989.

History: En. Sec. 2, Ch. 619, L. 1983.

90-6-322. Repealed. Sec. 21, Ch. 672, L. 1989.

History: En. Sec. 3, Ch. 619, L. 1983.

90-6-323. Local government budget authority. A local government unit may budget and expend payments received from a mineral developer under this part or part 4 of this chapter or pursuant to a plan approved under this part. If a payment is requested or received after the adoption of the budget for the fiscal year in which the payment is to be expended, the governing body of the local government unit may by a majority vote amend its budget to provide for the receipt and expenditure of the payment.

History: En. Sec. 8, Ch. 582, L. 1985.

90-6-324 through 90-6-330 reserved.

90-6-331. *(Temporary)* **Payment to counties — statutory appropriation.** Prior to each October 31, all money segregated by county in the hard-rock mining impact trust account following allocation to the hard-rock mining impact trust account established in 90-6-304(2) as of the immediately preceding September 30 must be paid to the county for which the funds have been held in deposit. The payments to the counties are statutorily appropriated as provided in 17-7-502. The funds received by the county must be deposited in the county hard-rock mine trust account established in 7-6-2225. *(Terminates June 30, 2035—sec. 1, Ch. 181, L. 2025, sec. 3, Ch. 181, L. 2025.)*

90-6-331. *(Effective July 1, 2035)* **Fund transfer.** Prior to each October 31, all money segregated by county in the hard-rock mining impact trust account following allocation to the hard-rock mining impact trust account established in 90-6-304(2) as of September 30 immediately preceding must be transferred to the county for which the funds have been held in deposit. The funds transferred must be deposited in the county hard-rock mine trust account established in 7-6-2225.

History: En. Sec. 10, Ch. 672, L. 1989; amd. Sec. 2, Ch. 376, L. 1991; amd. Sec. 2, Ch. 616, L. 1991; amd. Sec. 37, Ch. 389, L. 1999; amd. Sec. 4, Ch. 464, L. 1999; amd. Sec. 5, Ch. 598, L. 2005; amd. Sec. 3, Ch. 442, L. 2009.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 181, L. 2025, and sec. 3, Ch. 181, L. 2025, amended sec. 5, Ch. 442, L. 2009, and sec. 1, Ch. 213, L. 2017, by extending the termination dates imposed by those sections to June 30, 2035. Effective October 1, 2025.

Part 4
Hard-Rock Mining Impact Property Tax Base Sharing

Part Cross-References

Residence — rules for determining, 1-1-215.
Property subject to taxation — classification, Title 15, ch. 6, part 1.
Tax appraisal, Title 15, ch. 7, part 1.
Tax assessment procedure, Title 15, ch. 8.
Tax equalization, Title 15, ch. 9, part 1.
Mining license taxes, Title 15, ch. 37.
Resource indemnity trust tax, Title 15, ch. 38.

90-6-401. Declaration of necessity and purpose. The commencement of new large-scale hard-rock mineral developments often results in revenue disparities among adjacent local government units. This occurs primarily when a mine that locates in one taxing jurisdiction causes population influxes in neighboring jurisdictions. The result can be that some jurisdictions will experience a need to increase expenditures and receive no corresponding increase in revenue, while others will experience an increase in revenue and receive no comparable increase in expenditures. There is therefore a need to allocate the increase in property tax base resulting from the development and operation of new large-scale mines so that property tax revenues will be equitably distributed among affected local government units.

History: En. Sec. 1, Ch. 635, L. 1983.

90-6-402. Definitions. As used in this part, the following definitions apply:

(1) "Affected local government unit" means a local government unit that will experience a need to increase services or facilities as a result of the commencement of large-scale mineral development or within which a large-scale mineral development is located in accordance with an impact plan adopted pursuant to 90-6-307.

(2) "Board" means the hard-rock mining impact board established in 2-15-1822.

(3) "Jurisdictional revenue disparity" means property tax revenues resulting from a large-scale hard-rock mineral development that are inequitably distributed among affected local government units as finally determined by the board in an approved impact plan.

(4) "Large-scale mineral development", for the purposes of this part, is defined in 90-6-302.

(5) "Local government unit", for the purposes of this part, means a county, municipality, or school district.

(6) "Mineral development employee" means a person who resides within the jurisdiction of an affected local government unit as a result of employment with a large-scale mineral development or its contractors or subcontractors.

(7) "Mineral development student" means a student whose parent or guardian resides within the jurisdiction of an affected local government unit as a result of employment with a large-scale mineral development or its contractors or subcontractors.

(8) "Taxable valuation" of a mineral development means the total of the gross proceeds taxable percentage specified in 15-6-132(2) when added to the taxable percentages of real property, improvements, machinery, equipment, and other property classified under Title 15, chapter 6, part 1.

History: En. Sec. 2, Ch. 635, L. 1983; amd. Sec. 88, Ch. 11, Sp. L. June 1989.

90-6-403. Jurisdictional revenue disparity — conditioned exemption and reallocation of certain taxable valuation. (1) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the board shall promptly notify the developer, all affected local government units, and the department of revenue of the disparity. Except as provided in 90-6-404 and this section, the increase in taxable valuation of the mineral development that occurs after the issuance and validation of a permit under 82-4-335 is not subject to the usual application of county and school district property tax mill levies. This increase in taxable valuation must be allocated to local government units as provided in 90-6-404. The increase in taxable valuation allocated as provided in 90-6-404 is subject to 15-10-420 and the application of property tax mill levies in the local government unit to which it is allocated. The increase in taxable valuation allocated to the local government unit is considered newly taxable property in the recipient local government unit as provided in 15-10-420.

(2) The total taxable valuation of a large-scale mineral development remains subject to the statewide mill levies and basic county levies for elementary and high school BASE funding programs as provided in 20-9-331 and 20-9-333.

(3) The provisions of subsection (1) remain in effect until the large-scale mineral development ceases operations or until the existence of the jurisdictional revenue disparity ceases, as determined by the board.

History: En. Sec. 3, Ch. 635, L. 1983; amd. Sec. 5, Ch. 311, L. 1987; amd. Sec. 55, Ch. 633, L. 1993; amd. Sec. 164, Ch. 584, L. 1999; amd. Sec. 18, Ch. 658, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 18, Ch. 658, L. 2025. Amendment effective May 13, 2025.

Applicability: Section 25, Ch. 658, L. 2025, provided: "[This act] applies to school district budgeting and funding distributions for school fiscal years beginning on or after July 1, 2025."

90-6-404. Allocation of taxable valuation for local taxation purposes. When property of a large-scale mineral development is subject to the provisions of 90-6-403, the increase in taxable valuation must be allocated by the department of revenue as follows:

(1) The local government unit in which the ore body or the mineral deposit being mined is located must be allocated 20% of the total increase in taxable valuation of the gross proceeds.

(2) The remaining increase in taxable valuation of the mineral development must be allocated between affected counties and affected municipalities according to the following formula based on the place of residence of mineral development employees:

(a) A portion, not to exceed 20%, to affected municipalities, based on that percentage of the total number of mineral development employees that reside within municipal boundaries. The taxable valuation allocated to affected municipalities must be distributed to each municipality according to its percentage of the total number of mineral development employees who reside within municipal boundaries. That portion of the taxable valuation distributed to a municipality pursuant to this section is subject to the same county mill levy as other taxable properties located in the municipality.

(b) The remaining portion of the taxable valuation must be distributed to each affected county according to its percentage of the total number of mineral development employees that reside within the county.

(3) The increase in taxable valuation equal to that subject to subsection (2) must be distributed pro rata among each affected high school district according to the percentage of the total number of mineral development high school students that reside within each district.

(4) The increase in taxable valuation equal to that subject to subsection (2) must be distributed pro rata among each affected elementary school district according to the percentage of the total number of mineral development elementary school students that reside within each district.

(5) The distribution formula specified in subsections (2) through (4) may be modified by an impact plan approved as provided in 90-6-307 or amended as provided in 90-6-311, if the modification is needed in order to ensure a reasonable correspondence between the occurrence of increased costs resulting from the mineral development and the allocation of taxable valuation resulting from the mineral development.

History: En. Sec. 4, Ch. 635, L. 1983; amd. Sec. 1, Ch. 760, L. 1991; amd. Sec. 5, Ch. 464, L. 1999.

90-6-405. Employee surveys. (1) Each large-scale mineral development subject to the provisions of 90-6-403 and 90-6-404 shall, on or before May 1 of each year, conduct a survey of its employees and promptly submit a report of its findings to the department of revenue. The report must include:

(a) the number of mineral development employees residing within each affected county;

(b) the number of mineral development employees residing within each affected municipality;

(c) the number of mineral development students residing in each affected high school district; and

(d) the number of mineral development students residing in each affected elementary school district.

(2) The initial allocation of the increase in taxable valuation made as provided in 90-6-403 and 90-6-404 shall be made on the basis of the place of residence of employees and the district of enrollment of students as projected in the approved impact plan for that period of time between the issuance and validation of the permit and the submission of an employee survey as provided for in this section.

History: En. Sec. 5, Ch. 635, L. 1983.

Part 5
Reverse Annuity Mortgage Loan

90-6-501. Short title. This part may be cited as the "Reverse Annuity Mortgage Loan Act".

History: En. Sec. 1, Ch. 178, L. 1989.

90-6-502. Purpose. Many elderly citizens in Montana own their own homes and have little or no remaining mortgage debt. Many of these home owners are persons of lower income who would benefit from an additional income source from the use of the equity in their homes. The legislature finds that reverse annuity mortgage loans would enable elderly home owners to provide more substantially for their own in-home support and specialized care. The purpose of this part is to:

(1) establish a reverse annuity mortgage loan program within the board of housing;

(2) authorize the board to make reverse annuity mortgage loans;

(3) counsel, assist, and protect elderly home owners who wish to obtain a reverse annuity mortgage loan; and

(4) administer a reverse annuity mortgage loan program that does not jeopardize the mortgagor's eligibility for medicaid and other means-tested programs.

History: En. Sec. 2, Ch. 178, L. 1989.

90-6-503. Definitions. As used in this part, unless the context requires otherwise, the following terms apply:

(1) "Mortgage" means a mortgage as defined in 90-6-103.

(2) "Mortgagee" means the holder of a mortgage or its assignee.

(3) "Mortgagor" means a person:

(a) who is of lower income as determined by the board. In its determination of lower income, the board shall take into consideration the criteria in 90-6-103(16).

(b) 68 years of age or older, except as provided on a case-by-case basis in accordance with program guidelines established by the board of housing;

(c) who is the owner and occupant of a single-family dwelling; and

(d) who has completed a reverse annuity mortgage counseling program approved by the board.

(4) "Reverse annuity mortgage loan" means a loan in which loan proceeds are advanced to the mortgagor to provide a monthly tax-free cash payment for 10 years.

(5) "Single-family dwelling" means a one- to four-family living unit.

History: En. Sec. 3, Ch. 178, L. 1989; amd. Sec. 1, Ch. 39, L. 1997.

90-6-504. Reverse annuity mortgage loan program. The board may make reverse annuity mortgage loans that are secured by a single-family dwelling located in this state. The loans must be made under terms and conditions adopted by the board pursuant to its authority under 90-6-104.

History: En. Sec. 4, Ch. 178, L. 1989.

90-6-505. Mortgage requirements. (1) Any mortgage securing payments made by a mortgagee to a mortgagor pursuant to a reverse annuity mortgage loan must be sufficiently definite, certain, and valid to secure all money actually advanced pursuant to and in accordance with its terms. The mortgage must secure money advanced at or subsequent to closing of the loan, up to but not exceeding the full amount of the loan. A reverse annuity mortgage has the same priority as if all money had been advanced at the time the mortgage was delivered. The mortgage must include but not be limited to the following:

(a) a statement that it is a reverse annuity mortgage loan;

(b) the full amount of the loan authorized;

(c) a statement of the dates on which advancements are to be made and the amounts of such advancements; and

(d) the events that will give rise to the maturity of the loan.

(2) The mortgagee and the mortgagor may modify the advancement dates in the mortgage by a statement signed by all parties to the mortgage and properly recorded with the original mortgage instrument. The modification may not limit or otherwise affect the priority of the mortgage.

History: En. Sec. 6, Ch. 178, L. 1989.

90-6-506. Repayment or termination of reverse annuity mortgage loan. (1) The mortgagor shall repay the reverse annuity mortgage loan as provided in this section.

(2) Repayment of any part of the reverse annuity mortgage loan is not required prior to the maturity of the loan and while the mortgagor resides on the secured property. The mortgagor may pay the outstanding loan balance in full at any time without penalty.

(3) The reverse annuity mortgage loan matures, advances under a reverse annuity mortgage loan terminate, and the entire unpaid balance of the loan plus accrued interest becomes due and payable only upon the occurrence of any of the following events:

(a) the death of the last surviving mortgagor;

(b) the sale or other transfer of the secured property to a person other than any of the original mortgagors;

(c) vacation of the secured property by the mortgagor, whether voluntarily, involuntarily, or pursuant to legal process; or

(d) any other occurrence that materially decreases the value of the property securing the loan or that will have the likely effect of causing the loan to not be repaid.

(4) Any occurrence allowing the termination of a loan as provided in subsection (3)(d) must be clearly recited in the mortgage, deed of trust, or trust indenture.

(5) Payment of the reverse annuity mortgage loan may not be required from any source other than the secured property.

History: En. Sec. 5, Ch. 178, L. 1989.

90-6-507. Rulemaking authority. The board shall adopt all procedural and substantive rules necessary for the administration of this part, including rules required to secure, implement, and administer the reverse annuity mortgage loan program.

History: En. Sec. 7, Ch. 178, L. 1989.

90-6-508. Exemption from environmental review. The board of housing is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing loans, administering a loan program, or creating a loan program related to reverse annuity mortgage loans to elderly citizens.

History: En. Sec. 8, Ch. 442, L. 2025.

Compiler's Comments

Effective Date: Section 12, Ch. 442, L. 2025, provided: "[This act] is effective July 1, 2025."

Part 6
Veterans' Home Loan Mortgage Program

90-6-601. Short title. This part may be cited as the "Montana Veterans' Home Loan Mortgage Program Act".

History: En. Sec. 1, Ch. 349, L. 2011.

90-6-602. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of housing provided for in 2-15-1814.

(2) "Coal tax trust fund" or "trust fund" means the trust fund created pursuant to Article IX, section 5, of the Montana constitution.

(3) "Eligible veteran" means an individual who is a Montana resident and who:

(a) is or has been a member of the Montana national guard;

(b) is or has been a member of the federal reserve forces of the armed forces of the United States, serving pursuant to Title 10 of the United States Code;

(c) is serving or has served on federal active duty pursuant to Title 10 of the United States Code;

(d) is an unremarried spouse of an individual who was otherwise an eligible veteran and was killed in the line of duty;

(e) is an eligible veteran as defined by the board pursuant to 90-6-605(2); or

(f) if previously a member of the armed forces, was discharged under honorable conditions.

(4) "First-time home buyer" means an individual determined by the board to be a first-time home buyer pursuant to rules adopted by the board.

(5) "Mortgage loan" means a loan for the purchase of real property with any improvements located within this state that is to be used for residential purposes and that is based upon a written instrument approved by a federal agency and that is written in the form of a trust indenture.

(6) "Participating financial institution" means a corporate lender or other loan originator approved by the board for originating and servicing loans pursuant to this part.

(7) "Resident" means an individual who maintains a permanent place of abode within Montana and who has not established a residence elsewhere even though the individual may be temporarily absent from the state.

(8) "Trust indenture" has the meaning provided in 71-1-303.

(9) (a) "Under honorable conditions" means a discharge or separation from military duty characterized by the armed forces as under honorable conditions. The term includes honorable discharge and general discharge.

(b) The term does not include a dishonorable discharge or another administrative discharge characterized by military regulation as other than honorable.

(10) "Veterans' home loan mortgage program" or "program" means the program created in 90-6-603.

History: En. Sec. 2, Ch. 349, L. 2011.

90-6-603. Veterans' home loan mortgage program created — use of Montana housing trust. (1) There is a Montana veterans' home loan mortgage program under the direction and management of the board for eligible veterans who are first-time home buyers.

(2) The board of housing shall administer $50 million or more of the Montana housing trust provided for in 90-6-150 for the purpose of the program. Until the board uses money in the trust fund to purchase a mortgage loan from a participating financial institution pursuant to this part, the money under the administration of the board must remain invested by the board of investments. As a loan made pursuant to this part is repaid, the principal payments on the loan must be deposited in the Montana housing trust until all of the principal of the loan is repaid. Interest received on the loan may be used by a participating financial institution and the board, in amounts determined by the board in accordance with 90-6-605, to pay for the origination and servicing of a loan by a participating financial institution and to pay the reasonable costs of the board for the administration of the program. After payment of associated expenses, interest received on the loan must be deposited in the Montana housing trust.

(3) Interest on a home mortgage loan made pursuant to this part must be charged at 1% less than the federal national mortgage association's delivery rate or 1% lower than the lowest interest rate charged by the board for the purposes of other home loan mortgage programs administered by the board, whichever is less. If the federal national mortgage association's rate becomes unavailable, the board shall use another similar rate for the purposes of this subsection. The board may not make a direct loan to an eligible veteran.

History: En. Sec. 3, Ch. 349, L. 2011; amd. Sec. 2, Ch. 213, L. 2013; amd. Sec. 2, Ch. 396, L. 2015; amd. Sec. 2, Ch. 190, L. 2019; amd. Sec. 33, Ch. 775, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 33, Ch. 775, L. 2025. Amendment effective June 19, 2025.

90-6-604. Additional terms of program. (1) The maximum amount of a loan made by the board pursuant to this part is 95% of the value of the statewide allowable purchase price determined by the board pursuant to 90-6-605.

(2) The board shall require as a condition for a loan that an eligible veteran participate in a first-time home buyer education program approved by the board.

(3) A loan made by the board must be secured by a government guaranty pursuant to rules adopted by the board unless the board determines pursuant to 90-6-605(2) to allow the use of conventional mortgage insurance requirements and coverage.

(4) An eligible veteran shall participate in a loan by contributing a minimum amount of $2,500 unless the board determines otherwise pursuant to 90-6-605(2). An eligible veteran may use the minimum contribution toward paying closing costs and may borrow from the veterans' home loan mortgage program the maximum loan amount allowed by the mortgage insurer for the loan.

(5) There is no limit on the maximum amount of income that may be earned by an eligible veteran for the purposes of a loan pursuant to this part.

(6) In order to allow small financial institutions to participate equitably in the program along with large financial institutions, the board shall adopt rules pursuant to 90-6-605 to specify the maximum amount of mortgage loans that may be made by any one participating financial institution.

(7) The legislative auditor must be allowed access to all documentation used for the purpose of the program.

(8) A report describing at least the operation and use of the program must be made by the board to the legislature as provided in 5-11-210. The report may be combined with other reports by the board or the department of commerce to the legislature.

History: En. Sec. 4, Ch. 349, L. 2011; amd. Sec. 1, Ch. 431, L. 2017.

90-6-605. Rules to be adopted by board. (1) The board shall adopt rules pursuant to the Montana Administrative Procedure Act necessary for administration of the program, including rules:

(a) specifying which financial institutions may be participating financial institutions;

(b) specifying underwriting criteria for a program loan, such as minimum down payment, credit score, ratios of housing expense and of all reoccurring debt as a percentage of income of the borrower, and exceptions to those criteria;

(c) specifying the statewide allowable purchase price of a home for the purposes of the program;

(d) specifying the security required for a mortgage loan financed by the program;

(e) providing the legislative auditor with access to records of participating financial institutions regarding loans made pursuant to this part;

(f) governing the loan application process;

(g) specifying the maximum servicing fees and origination fee that may be charged by a participating financial institution; and

(h) other loan conditions determined to be necessary by the board.

(2) The board may adopt rules pursuant to the Montana Administrative Procedure Act changing any of the following provisions if the board determines a change is necessary to carry out the purposes of the program:

(a) the definition of eligible veteran in 90-6-602;

(b) the security for a loan provided in 90-6-604; and

(c) the requirements for minimum participation for the eligible veteran provided for in 90-6-604.

History: En. Sec. 5, Ch. 349, L. 2011.

90-6-606. Exemption from environmental review. The board is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing loans, administering a loan program, or creating a loan program related to the veterans' home loan mortgage program.

History: En. Sec. 9, Ch. 442, L. 2025.

Compiler's Comments

Effective Date: Section 12, Ch. 442, L. 2025, provided: "[This act] is effective July 1, 2025."

Part 7
Montana Coal Endowment Program

90-6-701. Montana coal endowment program created — definitions. (1) (a) There is a Montana coal endowment program that consists of:

(i) the Montana coal endowment fund established in 17-5-703;

(ii) the infrastructure portion of the coal severance tax bond program provided for in 17-5-701(2).

(b) The Montana coal endowment program may borrow from the board of investments to provide additional financial assistance for local government infrastructure projects under this part, provided that no part of the loan may be made from retirement funds.

(2) Interest from the Montana coal endowment fund and from proceeds of the sale of bonds under 17-5-701(2) may be used to provide financial assistance for local government infrastructure projects under this part, to provide funding to the department of commerce for the administrative costs of the Montana coal endowment program, and to repay loans from the board of investments.

(3) As used in this part, the following definitions apply:

(a) "Infrastructure projects" means:

(i) drinking water systems;

(ii) wastewater treatment;

(iii) sanitary sewer or storm sewer systems;

(iv) solid waste disposal and separation systems, including site acquisition, preparation, or monitoring; or

(v) bridges.

(b) "Local government" means an incorporated city or town, a county, a consolidated local government, a tribal government, a county or multicounty water, sewer, or solid waste district, or an authority as defined in 75-6-304.

(c) "Montana coal endowment fund" means the coal severance tax infrastructure endowment fund established in 17-5-703(1)(b).

(d) "Montana coal endowment program" means the local government infrastructure investment program established in subsection (1).

(e) "Tribal government" means a federally recognized Indian tribe within the state of Montana.

History: En. Sec. 1, Ch. 3, Sp. L. January 1992; amd. Sec. 1, Ch. 432, L. 1993; amd. Sec. 2, Ch. 268, L. 1999; amd. Sec. 25, Ch. 498, L. 1999; amd. Sec. 10, Ch. 458, L. 2009; amd. Sec. 24, Ch. 476, L. 2019; amd. Sec. 5, Ch. 330, L. 2021.

90-6-702. Purpose. The purpose of the Montana coal endowment program is to assist local governments in funding infrastructure projects that will:

(1) create jobs for Montana residents;

(2) promote economic growth in Montana by helping to finance the necessary infrastructure;

(3) encourage local public facility improvements;

(4) create a partnership between the state and local governments to make necessary public projects affordable;

(5) support long-term, stable economic growth in Montana;

(6) protect future generations from undue fiscal burdens caused by financing necessary public works;

(7) coordinate and improve infrastructure financing by federal, state, local government, and private sources; and

(8) enhance the quality of life and protect the health, safety, and welfare of Montana citizens.

History: En. Sec. 2, Ch. 3, Sp. L. January 1992; amd. Sec. 6, Ch. 330, L. 2021.

90-6-703. Types of financial assistance available. (1) The legislature shall provide for and make available to local governments the following types of financial assistance under this part:

(a) matching grants for local infrastructure projects;

(b) matching grants for infrastructure planning; and

(c) emergency grants for local infrastructure projects.

(2) The department of commerce may provide local governments with emergency grants for infrastructure projects only if necessary to remedy conditions that, if allowed to continue until legislative approval could be obtained, will endanger the public health or safety and expose the applicant to substantial financial risk. The department shall report to the governor, the legislative fiscal analyst, and the local government interim committee in accordance with 5-11-210 regarding emergency grants that are awarded during each biennium. The report must be provided in an electronic format.

(3) The department of commerce may provide local governments with matching grants for infrastructure planning. The department shall report to the governor and the legislature in accordance with 5-11-210 regarding infrastructure planning grants that are awarded during each biennium.

History: En. Sec. 5, Ch. 3, Sp. L. January 1992; amd. Sec. 2, Ch. 432, L. 1993; amd. Sec. 497, Ch. 418, L. 1995; amd. Sec. 7, Ch. 580, L. 2005; amd. Sec. 13, Ch. 389, L. 2011; amd. Sec. 20, Ch. 120, L. 2013; amd. Sec. 135, Ch. 261, L. 2021.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

90-6-704 through 90-6-708 reserved.

90-6-709. Agreements with tribal governments. (1) Agreements with tribal governments in Montana entered into under this part must contain, in addition to other appropriate terms and conditions, the following conditions:

(a) a requirement that in the event that a dispute or claim arises under the agreement, state law will govern as to the interpretation and performance of the agreement and that any judicial proceeding concerning the terms of the agreement will be brought in the district court of the first judicial district of the state of Montana;

(b) an express waiver of the tribal government's immunity from suit on any issue specifically arising from the transaction of a loan or grant; and

(c) an express waiver of any right to exhaust tribal remedies signed by the tribal government.

(2) Agreements with tribal governments must be approved by the secretary of the United States department of the interior whenever approval is necessary.

History: En. Sec. 3, Ch. 268, L. 1999.

90-6-710. Priorities for projects — procedure — rulemaking. (1) The department of commerce must receive proposals for infrastructure projects from local governments on a continual basis. The department shall work with a local government in preparing cost estimates for a project. In reviewing project proposals, the department may consult with other state agencies with expertise pertinent to the proposal. For the projects under 90-6-703(1)(a), the department shall prepare and submit two lists containing the recommended projects and the recommended form and amount of financial assistance for each project to the governor, prioritized pursuant to subsection (2) and this subsection. One list must contain the ranked and recommended bridge projects, and the other list must contain the remaining ranked and recommended infrastructure projects referred to in 90-6-701(3)(a). Each list must be prioritized pursuant to subsection (2) of this section, but the department may recommend up to 20% of the interest earnings anticipated to be deposited into the Montana coal endowment fund established in 17-5-703 during the following biennium for bridge projects. Before making recommendations to the governor, the department may adjust the ranking of projects by giving priority to urgent and serious public health or safety problems. The governor shall review the projects recommended by the department and shall submit the lists of recommended projects and the recommended financial assistance to the legislature.

(2) (a) In preparing recommendations under subsection (1), preference must be given to infrastructure projects based on the following order of priority:

(i) projects that solve urgent and serious public health or safety problems or that enable local governments to meet state or federal health or safety standards;

(ii) projects that reflect greater need for financial assistance than other projects;

(iii) projects that incorporate appropriate, cost-effective technical design and that provide thorough, long-term solutions to community public facility needs;

(iv) projects that reflect substantial past efforts to ensure sound, effective, long-term planning and management of public facilities and that attempt to resolve the infrastructure problem with local resources;

(v) projects that enable local governments to obtain funds from sources other than the funds provided under this part;

(vi) projects that provide long-term, full-time job opportunities for Montanans, that provide public facilities necessary for the expansion of a business that has a high potential for financial success, or that maintain the tax base or that encourage expansion of the tax base; and

(vii) projects that are high local priorities and have strong community support.

(b) (i) The department may not recommend or prioritize projects submitted by a local government that is in violation of 2-1-602 pursuant to the provisions of 2-1-605.

(ii) For the purposes of this subsection (2)(b), "local government" has the meaning provided in 2-1-601.

(3) After the review required by subsection (1), the projects must be approved by the legislature.

(4) The department shall adopt rules necessary to implement the Montana coal endowment program.

(5) The department shall, in accordance with 5-11-210, report to the legislature the status of all projects that have not been completed in order for the legislature to review each project's status and determine whether the authorized grant should be withdrawn.

(6) A local government may begin construction of the proposed infrastructure project after submitting an application to the department and prior to legislative approval of a grant award, if the local government:

(a) has secured the firm commitment of all funding necessary to finance the proposed project;

(b) assumes all risk, liability, and financing for the proposed project; and

(c) acknowledges that any project expenses incurred prior to legislative approval of a grant award may be rendered ineligible by the department if the local government fails to meet any program requirements set forth in this part or the rules adopted by the department pursuant to subsection (4).

History: En. Sec. 6, Ch. 3, Sp. L. January 1992; amd. Sec. 3, Ch. 432, L. 1993; amd. Sec. 1, Ch. 453, L. 1999; amd. Sec. 4, Ch. 10, Sp. L. May 2000; amd. Sec. 8, Ch. 580, L. 2005; amd. Sec. 14, Ch. 389, L. 2011; amd. Sec. 8, Ch. 101, L. 2021; amd. Sec. 136, Ch. 261, L. 2021; amd. Sec. 7, Ch. 330, L. 2021; amd. Sec. 10, Ch. 466, L. 2021.

90-6-711 through 90-6-714 reserved.

90-6-715. *(Temporary)* **Special revenue account — use.** (1) (a) The Montana coal endowment regional water system special revenue account may be used to:

(i) provide matching funds to plan and construct regional drinking water systems in Montana;

(ii) pay the debt service for regional water system bond issues;

(iii) provide funding of administrative expenses for state and local entities associated with regional drinking water systems; and

(iv) pay the costs of eligible projects on an interim basis pending the receipt of grant and loan funds by those systems or entities.

(b) Except for the debt service administrative expenses and payment of the costs of eligible projects on an interim basis provided for in subsection (1)(a), each state dollar must be matched equally by local funds. Federal and state grants may not be used as a local match.

(2) Up to 25% of the local matching funds required under subsection (1) for the Montana coal endowment regional water system may be in the form of debt that was incurred by local government entities included in the regional water system to construct individual drinking water systems before the individual systems were connected to the regional system. However, the amount of an individual entity's debt that may be used for matching funds is limited to the amount necessary to allow the entity to maintain its water service charges below the hardship standard established by the department through administrative rules adopted under 90-6-710.

(3) The funds in the account are further restricted to be used to finance regional drinking water systems that supply water to large geographical areas and serve multiple local governments, such as projects in north central Montana, from the waters of the Tiber reservoir,

that will provide water for domestic use, industrial use, and stock water for communities and rural residences that lie south of the Canadian border, west of Havre, north of Dutton, and east of Cut Bank and in northeastern Montana, from the waters of the Missouri River, that will provide water for domestic use, industrial use, and stock water for communities and rural residences that lie south of the Canadian border, west of the North Dakota border, north of the Missouri River, and east of range 39.

(4) The funds must be administered by the department of natural resources and conservation for eligible projects. *(Terminates June 30, 2031—secs. 1 through 3, Ch. 305, L. 2015.)*

History: En. Sec. 2, Ch. 495, L. 1999; amd. Sec. 1, Ch. 233, L. 2001; amd. Sec. 10, Ch. 435, L. 2001; amd. Sec. 134, Ch. 114, L. 2003; amd. Sec. 1, Ch. 158, L. 2003; amd. Sec. 1, Ch. 352, L. 2005; amd. Sec. 9, Ch. 580, L. 2005; amd. Sec. 8, Ch. 330, L. 2021.

Cross-References

Public drinking water special revenue fund, 75-6-115.

Drinking Water State Revolving Fund Act, Title 75, ch. 6, part 2.

90-6-716. Exemption from environmental review. The department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing grants related to infrastructure projects or planning pursuant to this part.

History: En. Sec. 1, Ch. 113, L. 2023.

Part 8
Quality Schools Facility Grant Program (Repealed)

90-6-801. Repealed. Sec. 9, Ch. 404, L. 2017.

History: En. Sec. 1, Ch. 377, L. 2009.

90-6-802. Repealed. Sec. 9, Ch. 404, L. 2017.

History: En. Sec. 2, Ch. 377, L. 2009; amd. Sec. 4, Ch. 325, L. 2013.

90-6-803. Repealed. Sec. 9, Ch. 404, L. 2017.

History: En. Sec. 3, Ch. 377, L. 2009.

90-6-804 through 90-6-808 reserved.

90-6-809. Repealed. Sec. 9, Ch. 404, L. 2017.

History: En. Sec. 4, Ch. 377, L. 2009.

90-6-810. Repealed. Sec. 9, Ch. 404, L. 2017.

History: En. Sec. 5, Ch. 377, L. 2009.

90-6-811. Repealed. Sec. 9, Ch. 404, L. 2017.

History: En. Sec. 6, Ch. 377, L. 2009; amd. Sec. 10, Ch. 325, L. 2013.

90-6-812. Repealed. Sec. 10, Ch. 404, L. 2017.

History: En. Sec. 7, Ch. 377, L. 2009.

90-6-813 through 90-6-817 reserved.

90-6-818. Repealed. Sec. 10, Ch. 404, L. 2017.

History: En. Sec. 8, Ch. 377, L. 2009.

90-6-819. Repealed. Sec. 9, Ch. 404, L. 2017.

History: En. Sec. 9, Ch. 377, L. 2009.

Part 9 reserved

Part 10
Oil, Gas, and Coal Resource Funding

90-6-1001. Oil, gas, and coal natural resource accounts. (1) There is an oil and gas natural resource distribution account in the state special revenue fund. The collections allocated to the account from 15-36-331(2)(b) must be deposited in the account to be used as provided in 15-36-332(7).

(2) There is a coal natural resource account in the state special revenue fund. The collections allocated to the account from 15-35-108(9) must be deposited in the account. The account receives earnings from the coal board fund as provided in 17-5-703. The money in the account is allocated to the coal board provided for in 2-15-1821 and may be used only for local impact grants provided for in 90-6-205 through 90-6-207 and costs related to the administration of the grant awards.

History: En. Sec. 1, Ch. 603, L. 2005; amd. Sec. 5, Ch. 33, L. 2009; amd. Sec. 32, Ch. 128, L. 2011; amd. Sec. 14, Ch. 351, L. 2017; amd. Sec. 6, Ch. 414, L. 2019; amd. Sec. 4, Ch. 717, L. 2023.

CHAPTER 7
FACILITY FINANCE AUTHORITY

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Chapter Cross-References

Montana Facility Finance Authority — creation, 2-15-1815.
Hospitals and related facilities, Title 50, ch. 5.

Part 1
General Provisions

90-7-101. Short title. This chapter may be cited as the "Montana Facility Finance Authority Act".

History: En. Sec. 2, Ch. 703, L. 1983; amd. Sec. 5, Ch. 137, L. 2001.

90-7-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Authority" means the Montana facility finance authority created in 2-15-1815.

(2) "Capital reserve account" means the account established in 90-7-317.

(3) "Costs" means costs allowed under 90-7-103.

(4) "Eligible facility" means any eligible facility as defined in 90-7-104.

(5) (a) "Institution" means any public or private:

(i) nonprofit hospital, corporation, or other organization authorized to provide or operate an eligible facility in this state;

(ii) nonprofit prerelease center, corporation, or other organization authorized to operate a prerelease center in this state; or

(iii) for-profit or nonprofit corporation or other organization authorized to provide for or to operate a project;

(iv) eligible facility with qualified small issue bond financing pursuant to section 144(a) of the Internal Revenue Code, 26 U.S.C. 144(a); or

(v) nonprofit organized under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3).

(b) The term also includes the following, provided that the entity is a nonprofit entity or is controlled by one or more nonprofit entities:

(i) a network of health care providers, regardless of how it is organized;

(ii) an integrated health care delivery system;

(iii) a joint venture or partnership between or among health care providers;

(iv) a purchasing alliance composed of health care providers;

(v) any health insurers and third-party administrators that are participants in a system, network, joint venture, or partnership that provides health services through one or more health facilities.

(6) "Participating institution" means an institution that undertakes the financing, refunding, or refinancing of obligations on the construction or acquisition of an eligible facility pursuant to the provisions of this chapter.

(7) "Revenue" means, with respect to eligible facilities, the rents, fees, charges, interest, principal repayments, and other income received or to be received by the authority from any source on account of the eligible facilities.

History: En. Sec. 3, Ch. 703, L. 1983; amd. Sec. 1, Ch. 673, L. 1991; amd. Sec. 1, Ch. 477, L. 1997; amd. Sec. 1, Ch. 479, L. 1997; amd. Sec. 6, Ch. 137, L. 2001; amd. Sec. 1, Ch. 402, L. 2009; amd. Sec. 49, Ch. 489, L. 2009; amd. Sec. 2, Ch. 158, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 158, L. 2025. Amendment effective April 16, 2025.

90-7-103. Allowable costs. Costs eligible for financing or refinancing under this chapter include:

(1) the total of all reasonable or necessary costs incidental to the acquisition, construction, reconstruction, repair, alteration, equipment, enlargement, and improvement of an eligible facility and the acquisition of all real and personal property interests necessary or useful in connection with the eligible facility and all other undertakings that the authority considers reasonable or necessary for the development of the eligible facility;

(2) the cost of demolishing or removing any building or structure on land so acquired, the cost of acquiring any land to which the building or structure may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if judged advisable by the authority, for a period after completion of construction, and the cost of financing the eligible facility, including interest on bonds and notes issued by the authority to finance the eligible facility;

(3) reserves for principal and interest and for extensions, enlargements, additions, and improvements, including without limitation the cost of studies and surveys;

(4) the costs for land title and mortgage guaranty policies;

(5) the costs of plans, specifications, and architectural and engineering services;

(6) the costs of legal, organization, marketing, or other special services;

(7) the costs of financing, acquisition, demolition, construction, equipment, and site development of new and rehabilitated buildings;

(8) the costs of rehabilitation, reconstruction, repair, or remodeling of existing buildings; and

(9) all other expenses necessary and incidental to the construction and acquisition of the eligible facility, the financing of construction, and the acquisition and placing of the eligible facility into operation.

History: **En. Sec. 5, Ch. 703, L. 1983; amd. Sec. 2, Ch. 477, L. 1997; amd. Sec. 7, Ch. 137, L. 2001.**

90-7-104. Eligible facility. (1) The term "eligible facility" means any structure or building located within the United States that is suitable or qualifying for use as:

(a) a hospital, clinic, nursing home, or other health care facility as defined in 50-5-101;

(b) a public health center, as defined in 7-34-2102;

(c) a facility for persons with disabilities;

(d) a chemical dependency treatment facility;

(e) a nursing school;

(f) a medical teaching facility;

(g) a laboratory;

(h) a dental care facility;

(i) a prerelease center;

(j) a diagnostic, treatment, or surgical center;

(k) a facility providing services for the elderly;

(l) a facility owned, used, or supported by an entity organized under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3);

(m) a project as defined in 90-5-101;

(n) a facility with qualified small issue bond financing pursuant to section 144(a) of the Internal Revenue Code, 26 U.S.C. 144(a); or

(o) a structure or facility related to any of the uses enumerated in subsections (1)(a) through (1)(n) or required or useful for the operation of an eligible facility. These related facilities include supporting service structures and all necessary, useful, and related equipment, furnishings, and appurtenances and include without limitation the acquisition, preparation, and development of all lands and real and personal property necessary or convenient as a site for any of the uses enumerated in subsections (1)(a) through (1)(n).

(2) An eligible facility does not include:

(a) items such as food, fuel, supplies, or other items that are customarily considered as current operating expenses; and

(b) a structure used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship.

History: **En. Sec. 4, Ch. 703, L. 1983; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 19, Ch. 93, L. 1997; amd. Sec. 80, Ch. 472, L. 1997; amd. Sec. 3, Ch. 477, L. 1997; amd. Sec. 2, Ch. 479, L. 1997; amd. Sec. 8, Ch. 137, L. 2001; amd. Sec. 2, Ch. 402, L. 2009; amd. Sec. 50, Ch. 489, L. 2009; amd. Sec. 3, Ch. 158, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 158, L. 2025. Amendment effective April 16, 2025.

90-7-105 through 90-7-110 reserved.

90-7-111. Credit of state not pledged — statement on obligation required. (1) Obligations issued under the provisions of this chapter do not constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from the revenue or assets of the institution being financed.

(2) An obligation issued under this chapter must contain on the face of the obligation a statement to the effect that the state of Montana is not liable on the obligation, the obligation

is not a debt of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the obligation.

History: En. Sec. 18, Ch. 703, L. 1983; amd. Sec. 4, Ch. 477, L. 1997.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.
Security of bondholders, 90-7-304.
Pledge by state not to impair obligation and to properly administer program, 90-7-311.
Pledge of revenue, money, or property, 90-7-312.

90-7-112. Exemption from taxation — securities law. (1) The authority performs a public function for the benefit of the people of the state for the improvement of their health and living conditions and is a public instrumentality of the state. Accordingly, the income or other revenue of the authority and all property owned by the authority and any bonds, notes, or other obligations issued under this chapter, their transfer, and income therefrom, including any profit made on the sale thereof, are exempt at all times from all taxation in the state of Montana.

(2) Bonds issued by the authority are exempt from the Montana Securities Act, but copies of all prospectus and disclosure documents must be deposited with the state securities commissioner for public inspection.

History: En. Sec. 19, Ch. 703, L. 1983.

Cross-References

Organizations exempt from tax, 15-31-102.
Securities regulation, Title 30, ch. 10.
Montana Securities Act, Title 30, ch. 10, parts 1 through 3.

90-7-113. Bonds as legal investment. (1) Bonds issued by the authority under the provisions of this chapter are securities in which funds may be legally and properly invested, including capital in the control of or belonging to:

(a) public officers and public bodies of the state and its political subdivisions;

(b) insurance companies;

(c) credit unions, building and loan associations, investment companies, savings banks, banking associations, and trust companies;

(d) personal representatives, public administrators, trustees, and other fiduciaries; and

(e) pension, profit-sharing, and retirement funds.

(2) Bonds issued under this chapter are securities that may properly and legally be deposited with and received by any state or municipal officer or any agency or municipality of the state for any purpose for which the deposit of bonds or obligations of the state is authorized by law.

History: En. Sec. 23, Ch. 703, L. 1983.

Cross-References

State finance — permissible investments, 17-6-211.
Investments of financial institutions, 32-1-424.
Industrial development revenue bonds, 90-5-103.

90-7-114 and 90-7-115 reserved.

90-7-116. Taxation of certain projects financed by authority. (1) Regardless of whether the title to a project is held by the authority or a trustee acting for the authority, if the project is being financed by the authority on behalf of a for-profit corporation or other organization, the project is subject to taxation to the same extent, in the same manner, and under the same procedures as privately owned property in similar circumstances if the project is leased to or held by private interests on both the assessment date and the date the county commissioners set the mill levies in any year. The project is not subject to taxation in any year during which it is not leased to or held by private interests on both the assessment date and the date the county commissioners set the mill levy.

(2) When personal property owned by the authority or a trustee acting for the authority is taxed under this section and the personal property taxes on the personal property are delinquent, a levy by warrant for distraint for collection of the delinquent taxes may be made only on the personal property against which the taxes were levied.

History: En. Sec. 3, Ch. 402, L. 2009.

90-7-117 through 90-7-120 reserved.

90-7-121. Biennial audit. The authority's books and records must be audited at least once each biennium, by or at the direction of the legislative auditor. The actual costs of the audit shall be paid from the authority's funds.

History: **En. Sec. 26, Ch. 703, L. 1983; amd. Sec. 1, Ch. 220, L. 1989.**

Cross-References

Audit costs and contracts, Title 5, ch. 13, part 4.

Part 2

Authority

Administration, Powers, and Limitations

90-7-201. Authority — quorum — mode of action — expenses. (1) Four members of the authority constitute a quorum for the purpose of conducting business. Action may be taken by the authority upon the affirmative vote of at least four of its members. A vacancy in the membership of the authority does not impair the right of a quorum to exercise all the rights and perform all the duties of the authority.

(2) Each meeting of the authority for any purpose must be open to the public as provided for in Title 2, chapter 3, part 2. Resolutions need not be published or posted.

(3) Each member is entitled to be paid $100 for each day that the member is actually and necessarily engaged in the performance of board duties plus cost of travel, lodging, and meals as provided in 2-18-501 through 2-18-503.

History: **En. Sec. 6, Ch. 703, L. 1983; amd. Sec. 1, Ch. 309, L. 1987; amd. Sec. 3, Ch. 479, L. 1997; amd. Sec. 3, Ch. 330, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 330, L. 2025. Amendment effective July 1, 2025.

Cross-References

Open meetings required, Art. II, sec. 9, Mont. Const.; 2-3-203.

90-7-202. Powers of authority. The authority may:

(1) sue and be sued;

(2) have a seal;

(3) except as provided in 90-4-1303(2), adopt all procedural and substantive rules necessary for the administration of this chapter;

(4) except as provided in subsection (20), issue bonds or incur other debt as described in this chapter, including the issuance of notes or refunding bonds;

(5) except as provided in 17-6-308, invest any funds that are not required for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title 17, chapter 6, except that all investment income from funds invested by the authority, less the cost for investment, must be deposited in an enterprise fund to the credit of the authority to be used to carry out the purposes of this chapter;

(6) contract in its own name for the investment of funds, borrowing of funds, or any other purposes it considers appropriate to carry out the purposes of this chapter;

(7) participate with any financial institution in the purchase or guarantee of any loan or obligation;

(8) except as provided in subsection (20), issue bond anticipation notes or any other anticipatory financial obligations to secure funding of eligible facilities;

(9) enter into agreements or make advance commitments to ensure repayments required by loan agreements made by a lender. These agreements are subject to terms and conditions established by the authority.

(10) establish programs to make, sell, purchase, or insure loans to finance the costs of eligible facilities from any funds;

(11) accept gifts, grants, or loans from a federal agency, an agency or instrumentality of the state, a municipality, or any other source;

(12) enter into contracts or other transactions with a federal agency, an agency or instrumentality of the state, a municipality, a private organization, or any other entity consistent with the exercise of any power under this chapter;

(13) with regard to property:

(a) except as provided in subsection (20), acquire real or personal property or any right, interest, or easement in real or personal property by gift, purchase, transfer, foreclosure, lease, or otherwise;

(b) hold, sell, assign, lease, encumber, mortgage, or otherwise dispose of property;

(c) hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control or custody;

(d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption;

(e) make any disposition by public or private sale, with or without public bidding;

(f) commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement;

(g) bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure; and

(h) operate, manage, lease, dispose of, and otherwise deal with property in any manner necessary or desirable to protect its interests or the holders of its bonds or notes if that action is consistent with any agreement with the holders;

(14) service, contract, and pay for the servicing of loans;

(15) provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of eligible facilities whenever considered appropriate;

(16) consent, whenever it considers necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, or payment of any installment of principal, interest, or security or any other term of any contract, lease agreement, loan agreement, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(17) collect reasonable interest, fees, and charges from participating institutions in connection with making and servicing its lease agreements, loan agreements, mortgage loans, notes, bonds, commitments, and other evidences of indebtedness. Except as provided in 17-6-308, the interest, fees, and charges must be deposited to an enterprise fund to the credit of the authority. Interest, fees, and charges are limited to the amounts required to pay the costs of the authority, including operating and administrative expenses, reasonable allowances for losses that may be incurred, and bond financing costs, and to provide funds to make loans to finance the costs of eligible facilities or to make grants for the purposes described in 90-7-211(2)(e).

(18) make loans pursuant to 17-6-308;

(19) establish program parameters for loan or grant approval by authority staff;

(20) perform its duties to administer commercial property-assessed capital enhancements programs in accordance with Title 90, chapter 4, part 13. The authority's power is limited strictly to the administration of the commercial property-assessed capital enhancements program in accordance with Title 90, chapter 4, part 13, and the authority may not provide financing, acquire real property, or issue bonds, other than as a conduit issuer of bonds with the underlying obligations to be assigned on issuance, in its administration of the commercial property-assessed capital enhancements program. Nothing in this subsection may be construed as limiting the ability of the authority to provide financial or other services otherwise allowed under this section to property- assessed capital enhancements programs.

(21) perform any other acts necessary and convenient to carry out the purposes of this chapter.

History: En. Sec. 7, Ch. 703, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 5, Ch. 477, L. 1997; amd. Sec. 4, Ch. 479, L. 1997; amd. Sec. 2, Ch. 160, L. 1999; amd. Sec. 9, Ch. 137, L. 2001; amd. Sec. 9, Ch. 444, L. 2021.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Lawsuits — security not required on behalf of state, 25-1-402.
Lawsuits — notice to Attorney General, Title 25, ch. 1, part 5.
Property, Title 70.
Mortgages, Title 71, ch. 1.
Foreclosure, 71-1-221 through 71-1-235.

90-7-203. Staff of authority. The authority may employ or contract for any professional staff or consultants necessary. Such employment and contracting must be done in consultation with the department of commerce.

History: En. Sec. 9, Ch. 703, L. 1983.

Cross-References

State employees generally, Title 2, ch. 18.
Retained services to Board — negotiated fee, 90-7-211.

90-7-204. Agent of the authority. The authority may designate a participating institution as its agent for determining the location and character of an eligible facility undertaken by that institution under the provisions of this chapter. As agent, the institution may acquire, construct, reconstruct, renovate, replace, improve, maintain, repair, operate, lease, as lessee or lessor, and enter into contracts for any and all such purposes, including contracts for the management and operation of the facility.

History: En. Sec. 11, Ch. 703, L. 1983; amd. Sec. 6, Ch. 477, L. 1997.

Cross-References

Agency, Title 28, ch. 10.

90-7-205 through 90-7-210 reserved.

90-7-211. Necessary expenses — fees. (1) Except as provided in 90-4-1305(3)(a), all expenses of the authority incurred in carrying out the provisions of this chapter are payable solely from funds provided under the authority of this chapter. Liability may not be incurred by the authority beyond the extent to which money has been provided under this chapter, except for the purposes of meeting the necessary expenses of initial organization and operation and until the date that the authority derives money from funds provided under this chapter. The authority may borrow money for necessary expenses of organization and operation. The borrowed money must be repaid within a reasonable time after the authority receives funds provided for under this chapter.

(2) When an application is made to the authority by any participating institution for financial assistance to provide for its eligible facilities, the application may be accompanied by an initial planning service fee in an amount determined by the authority. The initial planning service fee may be included in the cost of the eligible facilities to be financed. In addition to the initial fee, an annual planning service fee may be paid to the authority by each participating institution in an amount determined by the authority. The annual planning service fee may be paid on the dates or in installments that are satisfactory to the authority. The fees must be used for:

(a) necessary expenses to determine the need for eligible facilities in the area concerned, and to that end, the authority may use recognized voluntary and official health planning organizations and agencies at local, regional, and state levels;
(b) necessary administrative, operating, and financing expenses;
(c) reserves for anticipated future expenses or loan losses;
(d) loans to finance the costs of eligible facilities; and
(e) grants to institutions to assist in determining eligibility for or compliance with government programs.

(3) The authority may, for a negotiated fee, retain the services of any other public or private person, firm, partnership, association, or corporation for the furnishing of services and data for use by the authority in determining the need for and location of any eligible facility for which application is being made or for other services or surveys that the authority considers necessary to carry out the purposes of this chapter.

History: En. Sec. 20, Ch. 703, L. 1983; amd. Sec. 7, Ch. 477, L. 1997; amd. Sec. 5, Ch. 479, L. 1997; amd. Sec. 10, Ch. 137, L. 2001; amd. Sec. 10, Ch. 444, L. 2021.

90-7-212. Purchase of bonds by authority. The authority may purchase its bonds or notes. The authority may hold, pledge, cancel, or resell such bonds or notes, subject to and in accordance with agreements with bondholders or noteholders.

History: En. Sec. 15, Ch. 703, L. 1983.

90-7-213. Loan limitation. A loan made by the authority may not exceed the total cost of the eligible facility being financed as the cost is determined by the participating institution and approved by the authority.

History: En. Sec. 10, Ch. 703, L. 1983; amd. Sec. 8, Ch. 477, L. 1997; amd. Sec. 6, Ch. 479, L. 1997; amd. Sec. 11, Ch. 137, L. 2001.

Cross-References

Aggregate biennial bonding and borrowing authority, 90-7-302.

90-7-214. Restriction on operating facility — leases. (1) The authority may not operate an eligible facility as a business other than as a lessee or lessor. The lease must provide for rentals adequate to pay the principal and interest due on bonds and to create and maintain reserves and accounts for depreciation as the authority determines necessary.

(2) The lease may contain terms and conditions that the authority considers proper. The lease may be terminated upon failure of the participating institution to comply with any obligation under the lease. The lease may include a renewal or an option to purchase provision upon terms or conditions that the authority considers desirable.

(3) Upon payment of all indebtedness incurred by the authority for financing an eligible facility, the authority may convey any of the eligible facility to the lessee, with or without consideration.

History: En. Sec. 8, Ch. 703, L. 1983; amd. Sec. 9, Ch. 477, L. 1997; amd. Sec. 12, Ch. 137, L. 2001.

90-7-215 through 90-7-219 reserved.

90-7-220. Montana developmental center loan. (1) The department of public health and human services may enter into a loan agreement with the Montana facility finance authority for the purpose of financing the costs of acquiring, constructing, and equipping facilities for persons with developmental disabilities at the Montana developmental center in Boulder, including the establishment of reserves and the payment of costs of the financing. The maximum principal amount of the loan may not exceed $10.5 million for construction and related costs, plus the necessary amounts for capitalized interest, debt service reserves, and financing costs, and the loan must be payable over a term not to exceed 30 years and must bear interest and contain other terms and provisions with respect to prepayment or otherwise as are not inconsistent with this section and as the department approves. Investment earnings on the authority's bonds or on funds held for the bonds must be used to pay the principal and interest on the loan as provided in the loan agreement.

(2) The loan may be secured by a mortgage on the Montana developmental center facility, including the land on which it is located. The loan constitutes a special limited obligation of the department, and the principal and interest payments required by that agreement are payable solely from the facility revenue obtained by the department from the ownership and operation of and the provision of services at the Montana developmental center, including payments or reimbursements from private users, insurers, and the federal government. All facility revenue obtained from services provided by the Montana developmental center must be deposited in a special revenue fund and must be applied to the payment of the principal and interest payments as due under the loan agreement. Whenever facility revenue exceeds the amount and terms specified and required to repay the loan and maintain required reserves, the excess must be used to pay the remainder of the principal and interest of the loan. As long as the loan remains outstanding and the department provides services for persons with developmental disabilities, the department shall use the Montana developmental center for those purposes or for other purposes as permitted by the loan agreement and state law, except when foreclosure occurs under the agreement or the mortgage. Notwithstanding 77-2-302(1) and upon foreclosure of a mortgage given to secure the loan agreement, there must be paid to the board of land commissioners as a first and prior claim against the mortgaged land an amount equal to the full market value of the land as determined by the board prior to the execution of the mortgage and after appraisal by a qualified land appraiser. The loan agreement may contain other provisions or agreements that the department determines are necessary and that are not inconsistent with the provisions of this chapter.

(3) The obligations of the department under the agreement are special limited obligations payable solely from the facility revenue and do not constitute a debt of the state or obligate the state to appropriate or apply any funds or revenue of the state, except the facility revenue as provided in this section.

History: **En. Sec. 1, Ch. 819, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 513, L. 1993; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 565, Ch. 546, L. 1995; amd. Sec. 64, Ch. 422, L. 1997; amd. Sec. 13, Ch. 137, L. 2001; amd. Sec. 16, Ch. 444, L. 2015.**

90-7-221. Montana state hospital loan. (1) The department of public health and human services may enter into a loan agreement with the authority for the purpose of financing the costs of acquiring, constructing, and equipping facilities for the mentally ill at the Montana state hospital in Warm Springs, including the establishment of reserves and the payment of costs of the financing. The maximum principal amount of the loan may not exceed $21 million for construction and related costs, plus the necessary amounts for capitalized interest, debt service reserves, and financing costs. The loan must be payable over a term not to exceed 25 years and must bear interest and contain other terms and provisions with respect to prepayment or otherwise that are not inconsistent with this section and that the department approves. Investment earnings on the authority's bonds or on funds held for the bonds must be used to pay the principal and interest on the loan as provided in the loan agreement.

(2) The loan may be secured by a mortgage on the Montana state hospital facility, including the land on which it is located. The loan constitutes a special limited obligation of the department, and the principal and interest payments required by that agreement are payable from the facility revenue obtained by the department from the ownership and operation of and the provision of services at the Montana state hospital and the Montana mental health nursing care center, including payments or reimbursements from private users, insurers, and the state or federal government. All facility revenue obtained from services provided by the Montana state hospital and the Montana mental health nursing care center must be deposited in a special revenue fund and must be applied to the payment of the principal and interest payments due under the loan agreement. Whenever the foregoing facility revenue exceeds the amount and terms specified and required to repay the loan and maintain required reserves, the excess must be deposited as provided in 53-1-413. As long as the loan remains outstanding and the state provides services for the mentally ill, the department shall use the Montana state hospital and the Montana mental health nursing care center for those purposes or for other purposes as permitted by the loan agreement and state law, except when foreclosure occurs under the agreement or the mortgage. Notwithstanding the provisions of 77-2-302(1) and upon foreclosure of a mortgage given to secure the loan agreement, there must be paid to the board of land commissioners as a first and prior claim against the mortgaged land an amount equal to the full market value of the land as determined by the board prior to the execution of the mortgage and after appraisal by a qualified land appraiser. The loan agreement may contain other provisions or agreements that the department determines are necessary and that are not inconsistent with the provisions of Title 90, chapter 7.

(3) The obligations of the department under the agreement are special limited obligations payable solely from the facility revenue of the Montana state hospital and the Montana mental health nursing care center and do not constitute a debt of the state or obligate the state to appropriate or apply any funds or revenue of the state, except the facility revenue as provided in this section.

History: **En. Sec. 1, Ch. 557, L. 1995; amd. Sec. 65, Ch. 422, L. 1997.**

90-7-222 through 90-7-224 reserved.

90-7-225. Procedure prior to financing qualified small bond issue projects. (1) In addition to meeting the other requirements contained in this chapter or in state or federal law, the requirements of subsections (2) through (4) must be met before financing is provided for a project described in 90-7-104(1)(n).

(2) The authority shall find that the financing is in the public interest. In order to determine whether or not the financing is in the public interest, a public hearing must be conducted in the following manner:

(a) The city or county in which the project will be located must be notified of project information, including a project description, the name of the borrower, and the approximate par value of the bonds. The city and county shall, within 30 days after receipt of the notice, notify the board if it elects to conduct the hearing, even if the local government is not the issuer of the bonds.

(b) If a request for a local hearing is not received by the authority within 30 days after the notification in subsection (2)(a), the authority may hold the hearing at a time and place it determines.

(3) Notice of the authority's hearing must be published at least 7 calendar days prior to the date set for the hearing by publication on a governmental unit website and in a newspaper of general circulation in the city or county where the hearing will be held and the project will be located. The notice must include the time and place of the hearing, a general description of the nature and location of the project, the name of the lessee, borrower, or user of the project, and the maximum principal amount of the financing to be provided by the authority.

(4) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government shall notify the authority of its determination of whether the financing is in the public interest within 14 days after the completion of the public hearing.

History: En. Sec. 4, Ch. 402, L. 2009; amd. Sec. 1, Ch. 137, L. 2023; amd. Sec. 4, Ch. 158, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 158, L. 2025. Amendment effective April 16, 2025.

90-7-226. Procedure prior to financing prerelease center projects. In addition to meeting the other requirements contained in this chapter or in state or federal law, the following requirements must be met before financing is finalized and provided for a prerelease center:

(1) A contract must be approved by the authority and executed by the department of corrections and the institution.

(2) The department of corrections, the institution, and any other third parties involved in the financing are required to execute, covenant, deliver, and assign as necessary all documents, representations, assignments, collateral, and any other conditions that the authority or its agents, underwriters, or attorneys may reasonably determine to be necessary to adequately protect the authority, the department of corrections, and the state from default, financial loss, or other harm and to provide an opportunity to lower borrowing costs.

(3) The prerelease center project must be determined to be in the public interest and to be consistent with the legislative policies governing the provision of the services.

(4) The applicant shall submit a statement indicating that contracts to construct the prerelease center project will require all contractors to comply with Title 18, chapter 2, part 4.

(5) Adequate provision must be made in the loan agreement, lease, or other credit arrangement regarding a prerelease center project to provide for the payment of debt service on the bonds issued to finance the project, to create and maintain reserves for payment of the debt service, and to meet all costs and expenses of issuing and servicing the bonds.

History: En. Sec. 15, Ch. 477, L. 1997.

90-7-227. Public hearing. The department of corrections, when seeking funding under this chapter, shall hold a public hearing to determine whether or not the proposed project is in the public interest. The decision regarding public interest is determined by the department of corrections, not the authority. Notice of the public hearing must be published in a newspaper of general circulation in the community where the prerelease center would be located. Notice must be given at least once a week for 2 weeks prior to the date of the public hearing. The notice must include the time and place of the hearing, the general nature of the prerelease center project, the name of the borrower or user of the project, the estimated cost of the project, and the maximum amount of financing assistance to be provided under this chapter. A determination by the department of corrections that a prerelease center project is in the public interest does not require that it be financed under this chapter.

History: En. Sec. 16, Ch. 477, L. 1997.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

Printing and legal notices, Title 18, ch. 7.

90-7-228. Additional reserves, funds, and accounts. The authority may in its discretion establish additional reserves or other funds or accounts necessary, desirable, or convenient to further the accomplishment of the purposes of this chapter or to comply with the provisions of its resolution or agreements.

History: En. Sec. 17, Ch. 477, L. 1997.

90-7-229. Procedure prior to financing certain projects. (1) In addition to meeting the other requirements contained in this chapter or in state or federal law, the requirements of subsections (2) through (4) must be met before financing is provided for a project described in 90-7-104(1)(n).

(2) The authority shall find that the financing is in the public interest. In order to determine whether or not the financing is in the public interest, a public hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified, and the city and county shall, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if a request for a local hearing is not received by the authority within 14 days after the notification in subsection (2)(a), the authority may hold the hearing at a time and place it determines.

(3) Notice of the hearing must be published at least 7 calendar days prior to the date set for the hearing by publication on a governmental unit website and in a newspaper of general circulation in the city or county nearest to where the hearing will be held and the project will be located. The notice must include the time and place of the hearing, a general description of the nature and location of the project, the name of the lessee, borrower, or user of the project, and the maximum principal amount of the financing to be provided by the authority.

(4) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government shall notify the authority of its determination of whether the financing is in the public interest within 14 days after the completion of the public hearing.

History: En. Sec. 52, Ch. 489, L. 2009; amd. Sec. 2, Ch. 137, L. 2023; amd. Sec. 5, Ch. 158, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 158, L. 2025. Amendment effective April 16, 2025.

90-7-230. Taxation of projects. (1) Regardless of whether the title to a project is held by the authority or a trustee acting for the authority, if the project is being financed by the authority on behalf of a for-profit corporation or other organization, the project is subject to taxation to the same extent, in the same manner, and under the same procedures as privately owned property in similar circumstances if the project is leased to or held by private interests on both the assessment date and the date the county commissioners set the mill levies in any year. The project is not subject to taxation in any year during which it is not leased to or held by private interests on both the assessment date and the date the county commissioners set the mill levy.

(2) When personal property owned by the authority or a trustee acting for the authority is taxed under this section and the personal property taxes on the personal property are delinquent, levy by warrant for distraint for collection of the delinquent taxes may be made only on the personal property against which the taxes were levied.

History: En. Sec. 51, Ch. 489, L. 2009.

Part 3
Notes and Bonds

Part Cross-References

U.C.C. — form of negotiable instruments, 30-3-104.

U.C.C. — investment securities, Title 30, ch. 8.

90-7-301. Notes. The authority is authorized from time to time to issue its negotiable notes for any corporate purpose, including the payment of all or any part of the cost of any eligible facility, and to renew from time to time any notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes partly to renew notes or to discharge other obligations then outstanding and partly for any other purpose.

The notes may be authorized, sold, executed, and delivered in the same manner as bonds. Any resolution authorizing notes of the authority or any issue of notes may contain any provisions that the authority is authorized to include in any resolution authorizing bonds of the authority. The authority may include in its notes any terms, covenants, or conditions that it is authorized to include in any bonds. All notes must be payable from the proceeds of bonds, renewal notes, the revenue of the authority, or other available money not otherwise pledged, subject only to any contractual rights of the holders of any of its notes or other obligations then outstanding.

History: En. Sec. 12, Ch. 703, L. 1983; amd. Sec. 14, Ch. 137, L. 2001.

Cross-References

Credit of state not pledged — statement required on face of obligation, 90-7-111.

90-7-302. Bonds and notes of authority. (1) The authority may in each biennium borrow money and issue bonds and notes in an aggregate principal amount not to exceed $1.5 billion, exclusive of bonds or notes issued to refund outstanding bonds or notes. Starting July 1, 2027, and each subsequent biennium, the bond issuance cap must be increased by 3% each biennium.

(2) Bonds must be authorized. The authority may specify that the bonds must be dated and must mature, except that a bond may not mature more than 40 years from the date of its issue. Bonds must bear interest at a rate or rates, be in denominations, be in the proper registered or bearer form, be executed in a manner, be payable in a medium of payment and at a place or places, and be subject to terms of redemption that the authority may provide.

(3) All bonds, regardless of form or character, are negotiable instruments for all purposes of the Uniform Commercial Code, subject to requirements as to registration.

(4) All bonds may be sold at public or private sale in the manner, for the price or prices, and at the time or times that the authority may determine.

(5) Before the issuance of any bonds, the authority shall make provisions, by lease or other agreement, regarding the eligible facility or facilities being financed by the issue of the bonds, for rentals or other considerations sufficient, in the judgment of the authority, to:

(a) pay the principal of and interest on the bonds as they become due;

(b) create and maintain the reserves for payment of the principal and interest;

(c) meet all obligations in connection with the lease or other agreement; and

(d) meet all costs necessary to service the bonds unless the lease or agreement provides that the obligations are to be met or costs are to be paid by a party other than the authority.

(6) The authority, before issuing any bonds, shall certify that an applicant has submitted a statement that indicates that any contract let for a public project costing more than $25,000 and financed from the proceeds of bonds issued under this part will contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(7) The authority may combine, for the purposes of a single offering, bonds financing more than one eligible facility under this chapter.

History: En. Sec. 13, Ch. 703, L. 1983; amd. Sec. 1, Ch. 319, L. 1985; amd. Sec. 5, Ch. 464, L. 1993; amd. Sec. 7, Ch. 479, L. 1997; amd. Sec. 15, Ch. 137, L. 2001; amd. Sec. 1, Ch. 278, L. 2007; amd. Sec. 6, Ch. 158, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 158, L. 2025. Amendment effective April 16, 2025.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

90-7-303. Procedure for issuance of bonds. (1) The authority may not finance any eligible facility unless, prior to the issuance of any bonds or notes, the members find that the facility is an eligible facility and will be operated by an institution for the purpose of providing services contemplated by this chapter.

(2) The authority may not allow the proceeds of any bonds or notes to be expended for any eligible facility that is a health care facility unless the facility has been reviewed and approved by the appropriate regional and state health planning boards and has received any approval required by Title 50, chapter 5, part 3.

(3) The authority may not allow the proceeds of any bonds or notes to be expended for any eligible facility unless the institution provides evidence that the eligible facility is financially

feasible and that the institution reasonably expects that it will generate sufficient revenue to pay principal and interest payments when they become due.

History: En. Sec. 16, Ch. 703, L. 1983; amd. Sec. 1, Ch. 326, L. 1985; amd. Sec. 10, Ch. 477, L. 1997; amd. Sec. 16, Ch. 137, L. 2001.

Cross-References

Credit of state not pledged — statement required on face of obligation, 90-7-111.

90-7-304. Security of bondholders. (1) The payment of the principal of and interest on any bonds issued under this chapter must be secured by a pledge of the revenue out of which the bonds are made payable.

(2) The principal of and interest on any bonds issued under the authority of this part may be secured by:

(a) a mortgage covering all or any part of the property of the participating institution;

(b) a pledge of the lease or loan agreement relating to the eligible facility; or

(c) another security device that is considered most advantageous by the authority.

(3) The proceedings under which the bonds are authorized to be issued under the provisions of this chapter and any mortgage given to secure the bonds, including a mortgage given by the borrower or lessee, may contain any agreements and provisions customarily contained in instruments securing bonds, as the authority considers advisable. The provisions may not be in conflict with the provisions of this chapter, including without limitation provisions relating to:

(a) fixing and collection of rents or payments under any lease or loan agreement concerning the eligible facility covered by the proceedings or mortgage;

(b) terms to be incorporated in the lease or loan agreement;

(c) maintenance and insurance of the eligible facility;

(d) creation and maintenance of special funds from the revenue of the eligible facility; and

(e) rights and remedies available in the event of a default to the bondholders or to the trustee under a mortgage.

(4) The proceedings authorizing any bonds under the provisions of this chapter and any mortgage, including a mortgage given by the lessee or borrower, securing bonds may provide that in the event of a default in the payment of the principal of or the interest on the bonds or in the performance of any agreement contained in the proceedings or mortgage, the payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenue from the project in accordance with the proceedings or the provisions of the mortgage.

(5) Any mortgage made by the authority, lessee, or borrower to secure these bonds may provide that, in the event of a default in the payment of the bonds or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and the project sold under proceedings in equity or in any other manner permitted by law. The mortgage may also provide that any trustee under the mortgage or the holder of any of the bonds secured by the mortgage may become the purchaser at any foreclosure sale if the trustee is the highest bidder. A breach of an agreement may not impose any pecuniary liability upon the authority.

History: En. Sec. 14, Ch. 703, L. 1983; amd. Sec. 11, Ch. 477, L. 1997; amd. Sec. 17, Ch. 137, L. 2001.

Cross-References

Receivers, Title 27, ch. 20.
Mandamus, Title 27, ch. 26.
Mortgages, Title 71, ch. 1.
Foreclosure, 71-1-221 through 71-1-235.
Pledges, Title 71, ch. 2.
Credit of state not pledged, 90-7-111.
Pledge of revenue, money, or property — validity, 90-7-312.

90-7-305. Trust agreement to secure bonds. In the discretion of the authority, any bonds issued under this chapter may be secured by a trust agreement between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company in Montana or outside of Montana, if it is determined by the authority to be in the best interest of financing the bonds. The trust agreement or the resolution providing for the issuance of the bonds may pledge or assign the revenue to be received or the proceeds of any contract or contracts pledged and may convey or mortgage the project or any portion of the project. The trust agreement or resolution providing for the issuance of the bonds may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including particularly any provisions that have been specifically authorized to be included in a resolution of the authority authorizing bonds. A bank or trust company incorporated under the laws of this state that may act as depository of the proceeds of bonds or of revenue or other money may furnish indemnifying bonds or pledge securities that may be required by the authority. A trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees and may restrict the individual right of action by bondholders. In addition, a trust agreement or resolution may contain other provisions that the authority may consider reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the trust agreement or resolution may be treated as a part of the cost of the operation of an eligible facility.

History: En. Sec. 17, Ch. 703, L. 1983; amd. Sec. 12, Ch. 477, L. 1997; amd. Sec. 8, Ch. 479, L. 1997.

Cross-References

Trust company defined, 32-1-107.

90-7-306. Trust funds. All money received pursuant to this chapter, whether as proceeds from the sale of bonds, notes, or other obligations or as revenue or receipts, are trust funds to be held and applied solely as provided in this chapter. Any officer with whom or any bank or trust company with which such money is deposited shall act as trustee of the money and shall hold and apply it for the purposes of this chapter, subject to such regulations as this chapter and the resolution authorizing the bonds, notes, or other obligations of any issue or the trust agreement securing the obligations may provide.

History: En. Sec. 22, Ch. 703, L. 1983.

90-7-307. Conveyance of title. When the principal and interest on bonds issued by the authority to finance the cost of eligible facilities or to refinance outstanding indebtedness of one or more participating institutions, including any refunding bonds issued to refund and refinance bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the bonds and all other conditions of the resolution, lease, trust indenture, and mortgage or deed of trust or any other form of security arrangement, if any, authorizing and securing the bonds have been satisfied and the lien of the mortgage or deed of trust or any other form of security arrangement has been released in accordance with the provisions of the security arrangement, the authority shall promptly convey its interest in the facilities and any other facilities mortgaged or subject to deed of trust or any other form of security arrangement to secure the bonds to the participating institution or institutions.

History: En. Sec. 21, Ch. 703, L. 1983; amd. Sec. 13, Ch. 477, L. 1997.

90-7-308 through 90-7-310 reserved.

90-7-311. Pledge of state not to impair — to administer. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the authority and the holders of notes and bonds issued by the authority, including but not limited to an agreement to administer a loan program financed by the issuance of bonds, and to employ a staff sufficient and competent for this purpose.

History: En. Sec. 24, Ch. 703, L. 1983.

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.
Prohibition against impairment of contracts, Art. II, sec. 31, Mont. Const.
Montana Facility Finance Authority, 2-15-1815.

90-7-312. Pledge of revenue, money, or property — validity. Any pledge made by the authority is valid and binding from the time the pledge is made. The revenue, money, or property pledged and received by the authority is immediately subject to the lien of the pledge without any physical delivery or further act. The lien of any pledge is valid and binding against all parties having claims of any kind, whether in tort, contract, or otherwise, against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created is required to be recorded.

History: En. Sec. 25, Ch. 703, L. 1983.

90-7-313 through 90-7-316 reserved.

90-7-317. Capital reserve account. (1) There is a capital reserve account in the enterprise fund provided for in 90-7-202(17).

(2) The authority shall deposit into the capital reserve account:

(a) funds from state appropriations received for deposit into the account, as provided in 90-7-319, for bonds issued to finance capital projects for community health facilities that contract with the state to provide health care services, bonds issued to finance the facilities described in 90-7-220 and 90-7-221, or bonds used to finance prerelease centers that contract with the state; and

(b) proceeds from the sale of bonds or notes to the extent provided in the resolutions or indentures of the authority authorizing their issuance.

(3) The authority may also deposit into the capital reserve account:

(a) revenue from fees and charges imposed by the authority;

(b) income from the investment of funds belonging to the authority; and

(c) any other funds that may be available to the authority for the purpose of the account from any other source, including loans authorized under 90-7-320.

History: En. Sec. 2, Ch. 673, L. 1991; amd. Sec. 2, Ch. 513, L. 1993; amd. Sec. 5, Ch. 557, L. 1995; amd. Sec. 14, Ch. 477, L. 1997; amd. Sec. 9, Ch. 479, L. 1997.

90-7-318. Administration of capital reserve account. (1) The authority may pledge funds from the capital reserve account or a subaccount created in the capital reserve account as security for the payment of bonds and notes issued by the authority, as it may determine in the resolutions or indentures providing for their issuance.

(2) All funds held in the capital reserve account must be used solely for the payment of the principal and interest on bonds secured in whole or in part by the account or the debt service payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

(3) Funds in the capital reserve account may not, at any time, be withdrawn in an amount that reduces the account to an amount less than the sum of minimum capital reserve requirements established for the account except, with respect to bonds secured in whole or in part by the account, for the purpose of making payments, when due, of principal, interest, redemption premiums, and debt service fund payments for the payment of which other funds pledged are not available.

(4) Income or interest earned by or incremental to the capital reserve account due to its investment may be transferred to other accounts of the authority to the extent it does not reduce the amount of the capital reserve account below the sum of minimum capital reserve requirements for the account.

History: En. Sec. 3, Ch. 673, L. 1991.

90-7-319. Maintenance of capital reserve account. (1) In order to ensure the maintenance of the capital reserve account, the presiding officer of the authority shall, on or before September 1 in each year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any, required to restore the capital reserve account to the sum of minimum capital reserve requirements. The governor shall include in the executive budget submitted to the legislature the sum required to restore the capital reserve account to the minimum capital reserve requirements. All funds appropriated by the legislature for maintenance of the capital reserve account must be deposited in the account as required in 90-7-317.

(2) All amounts appropriated to the authority under this section constitute advances to the authority and, subject to the rights of the holders of bonds or notes of the authority, must be repaid to the state general fund, without interest from available operating revenue of the authority in excess of amounts required for the payment of bonds, notes, or other obligations of the authority, for maintenance of the capital reserve account, and for operating expenses.

History: En. Sec. 4, Ch. 673, L. 1991; amd. Sec. 2876, Ch. 56, L. 2009.

90-7-320. Loans — purchase of bonds and notes. Subject to the provisions of Title 17, chapter 6, the board of investments may, upon terms and conditions as the board considers reasonable:

(1) loan money to the authority for deposit in the capital reserve account; and
(2) purchase bonds and notes issued by the authority.

History: En. Sec. 5, Ch. 673, L. 1991.

CHAPTER 8
MONTANA CAPITAL COMPANY ACT
(Repealed)

Part 1 — General Provisions (Repealed)

Part 2 — Tax Credits Investments in Capital Company (Repealed)

Part 3 — Regulation of Capital Companies (Repealed)

Part 1
General Provisions
(Repealed)

90-8-101. Repealed. Sec. 7, Ch. 9, L. 2011.
History: En. Sec. 1, Ch. 554, L. 1983.

90-8-102. Repealed. Sec. 7, Ch. 9, L. 2011.
History: En. Sec. 2, Ch. 554, L. 1983; amd. Sec. 6, Ch. 124, L. 1987; amd. Sec. 82, Ch. 83, L. 1989; amd. Sec. 2, Ch. 263, L. 1991; amd. Sec. 15, Ch. 589, L. 1991.

90-8-103. Repealed. Sec. 7, Ch. 9, L. 2011.
History: En. Sec. 3, Ch. 554, L. 1983.

90-8-104. Repealed. Sec. 7, Ch. 9, L. 2011.
History: En. Sec. 4, Ch. 554, L. 1983; amd. Sec. 18, Ch. 554, L. 1983; amd. Sec. 154, Ch. 370, L. 1987; amd. Sec. 16, Ch. 581, L. 1987; amd. Sec. 1, Ch. 583, L. 1987; amd. Sec. 2, Ch. 708, L. 1989; amd. Sec. 3, Ch. 263, L. 1991; amd. Sec. 4, Ch. 467, L. 1991; amd. Sec. 1, Ch. 576, L. 1991; amd. Sec. 2, Ch. 410, L. 1999; amd. Sec. 26, Ch. 591, L. 2001; amd. Sec. 13, Ch. 405, L. 2003.

90-8-105. Repealed. Sec. 7, Ch. 9, L. 2011.
History: En. Sec. 17, Ch. 554, L. 1983; amd. Sec. 18, Ch. 554, L. 1983; amd. Sec. 2, Ch. 576, L. 1991.

90-8-106. Repealed. Sec. 7, Ch. 9, L. 2011.
History: En. Sec. 12, Ch. 576, L. 1991; amd. Sec. 3, Ch. 410, L. 1999.

Part 2
Tax Credits
Investments in Capital Company
(Repealed)

90-8-201. Repealed. Sec. 7, Ch. 9, L. 2011.
History: En. Sec. 5, Ch. 554, L. 1983; amd. Sec. 18, Ch. 554, L. 1983; amd. Sec. 2, Ch. 583, L. 1987; amd. Sec. 3, Ch. 708, L. 1989; amd. Sec. 4, Ch. 263, L. 1991; amd. Secs. 3, 13, Ch. 576, L. 1991; amd. Sec. 12, Ch. 549, L. 1997; amd. Sec. 4, Ch. 410, L. 1999; amd. Sec. 5, Ch. 351, L. 2003.

90-8-202. Repealed. Sec. 7, Ch. 9, L. 2011.
History: En. Sec. 6, Ch. 554, L. 1983; amd. Sec. 18, Ch. 554, L. 1983; amd. Sec. 3, Ch. 583, L. 1987; amd. Sec. 1, Ch. 707, L. 1989; amd. Sec. 4, Ch. 708, L. 1989; amd. Sec. 5, Ch. 263, L. 1991; amd. Secs. 4, 13, Ch. 576, L. 1991; amd. Sec. 9, Ch. 807, L. 1991; amd. Sec. 5, Ch. 410, L. 1999.

90-8-203. Repealed. Sec. 7, Ch. 9, L. 2011.
History: En. Sec. 7, Ch. 554, L. 1983; amd. Sec. 6, Ch. 263, L. 1991; amd. Sec. 5, Ch. 576, L. 1991; amd. Sec. 6, Ch. 410, L. 1999.

90-8-204. Repealed. Sec. 7, Ch. 9, L. 2011.
History: En. Sec. 16, Ch. 554, L. 1983; amd. Sec. 18, Ch. 554, L. 1983; amd. Sec. 7, Ch. 263, L. 1991; amd. Sec. 13, Ch. 576, L. 1991; amd. Sec. 7, Ch. 410, L. 1999.

90-8-205. Repealed. Sec. 7, Ch. 9, L. 2011.
History: En. Sec. 15, Ch. 554, L. 1983; amd. Sec. 8, Ch. 263, L. 1991.

Part 3
Regulation of Capital Companies
(Repealed)

90-8-301. Repealed. Sec. 7, Ch. 9, L. 2011.

History: En. Sec. 7(2)-(4), Ch. 554, L. 1983; amd. Sec. 18, Ch. 554, L. 1983; amd. Sec. 4, Ch. 583, L. 1987; amd. Sec. 5, Ch. 708, L. 1989; amd. Sec. 9, Ch. 263, L. 1991; amd. Secs. 6, 13, Ch. 576, L. 1991; amd. Sec. 313, Ch. 42, L. 1997; amd. Sec. 8, Ch. 410, L. 1999.

90-8-302. Repealed. Sec. 7, Ch. 9, L. 2011.

History: En. Sec. 9, Ch. 554, L. 1983; amd. Sec. 6, Ch. 708, L. 1989; amd. Sec. 10, Ch. 263, L. 1991; amd. Sec. 9, Ch. 410, L. 1999.

90-8-303. Repealed. Sec. 7, Ch. 9, L. 2011.

History: En. Sec. 10, Ch. 554, L. 1983; amd. Sec. 18, Ch. 554, L. 1983; amd. Sec. 7, Ch. 124, L. 1987; amd. Sec. 11, Ch. 263, L. 1991; amd. Sec. 7, Ch. 576, L. 1991; amd. Sec. 10, Ch. 410, L. 1999.

90-8-304. Repealed. Sec. 7, Ch. 9, L. 2011.

History: En. Sec. 14, Ch. 554, L. 1983; amd. Sec. 12, Ch. 272, L. 1987; amd. Sec. 12, Ch. 263, L. 1991; amd. Sec. 11, Ch. 410, L. 1999.

90-8-305. Repealed. Sec. 7, Ch. 9, L. 2011.

History: En. Sec. 1, Ch. 708, L. 1989; amd. Sec. 13, Ch. 263, L. 1991; amd. Sec. 16, Ch. 589, L. 1991; amd. Sec. 12, Ch. 410, L. 1999.

90-8-306 through 90-8-310 reserved.

90-8-311. Repealed. Sec. 7, Ch. 9, L. 2011.

History: En. Sec. 11, Ch. 554, L. 1983; amd. Sec. 18, Ch. 554, L. 1983; amd. Sec. 14, Ch. 263, L. 1991; amd. Sec. 8, Ch. 576, L. 1991; amd. Sec. 48, Ch. 19, L. 1999; amd. Sec. 13, Ch. 410, L. 1999.

90-8-312. Repealed. Sec. 7, Ch. 9, L. 2011.

History: En. Sec. 8, Ch. 554, L. 1983; amd. Sec. 18, Ch. 554, L. 1983; amd. Sec. 15, Ch. 263, L. 1991; amd. Sec. 9, Ch. 576, L. 1991; amd. Sec. 14, Ch. 410, L. 1999.

90-8-313. Repealed. Sec. 7, Ch. 9, L. 2011.

History: En. Sec. 12, Ch. 554, L. 1983; amd. Sec. 16, Ch. 263, L. 1991; amd. Sec. 10, Ch. 576, L. 1991; amd. Sec. 15, Ch. 410, L. 1999.

90-8-314 through 90-8-320 reserved.

90-8-321. Repealed. Sec. 7, Ch. 9, L. 2011.

History: En. Sec. 13, Ch. 554, L. 1983; amd. Sec. 7, Ch. 708, L. 1989; amd. Sec. 17, Ch. 263, L. 1991; amd. Sec. 11, Ch. 576, L. 1991; amd. Sec. 16, Ch. 410, L. 1999.

CHAPTER 9
AGRICULTURE DEVELOPMENT

Part 1 — General Provisions

90-9-101. Short title.
90-9-102. Purpose.
90-9-103. Definitions.
90-9-104. Growth through agriculture account.

Part 2 — Agriculture Development Council

90-9-201. Council organization — meetings.
90-9-202. Powers and duties of council.
90-9-203. Rulemaking.

Part 3 — Grants and Loans

90-9-301. Agriculture seed capital account — matching funds.
90-9-302. Repealed.
90-9-303. Repealed.
90-9-304 and 90-9-305 reserved.
90-9-306. Appropriation authority and funding — prohibitions.
90-9-307. Accountability.
90-9-308. Application for loans and grants — additional criteria.
90-9-309. Terms and conditions of loans.
90-9-310. Terms and conditions of grants.

90-9-311. General criteria underlying loans and grants.
90-9-312. Repealed.
90-9-313. Repealed.
90-9-314. Repealed.
90-9-315. Repealed.
90-9-316. Repealed.
90-9-317. Repealed.
90-9-318. Repealed.

Part 4 — Marketing — Export Assistance

90-9-401. Agricultural marketing enhancement.
90-9-402. Export finance assistance.

Part 5 — Farmer Loan Repayment Assistance Program

90-9-501. Montana farmer loan repayment assistance program.
90-9-502. Eligibility — amount of loan repayment assistance.
90-9-503. Payments to be made directly to educational loan servicer.
90-9-504. Loan repayment assistance documentation.
90-9-505. Funding — priorities.

Chapter Cross-References

Montana Agriculture Development Council — creation, 2-15-3015.
Montana Agricultural Loan Authority Act, Title 80, ch. 12.

Part 1
General Provisions

90-9-101. Short title. This chapter may be cited as the "Montana Growth Through Agriculture Act".

History: En. Sec. 2, Ch. 665, L. 1987.

90-9-102. *(Temporary)* **Purpose.** It is the purpose of this chapter to strengthen and diversify Montana's agricultural industry through loans, grants, and farmer loan repayment assistance to assist the development of innovative agricultural business organizational improvements and the commercialization and marketing of new agricultural products in order to keep pace with a transforming agricultural industry and to create new jobs and expand small business opportunities. *(Terminates June 30, 2029—sec. 16, Ch. 439, L. 2019.)*

90-9-102. *(Effective July 1, 2029)* **Purpose.** It is the purpose of this chapter to strengthen and diversify Montana's agricultural industry through loans and grants to assist the development of innovative agricultural business organizational improvements and the commercialization and marketing of new agricultural products in order to keep pace with a transforming agricultural industry and to create new jobs and expand small business opportunities.

History: En. Sec. 3, Ch. 665, L. 1987; amd. Sec. 1, Ch. 106, L. 2009; amd. Sec. 7, Ch. 439, L. 2019.

90-9-103. *(Temporary)* **Definitions.** As used in this chapter, the following definitions apply:

(1) "Act" means the Montana Growth Through Agriculture Act.

(2) "Agricultural business" means an enterprise engaged in the production, processing, marketing, distribution, or exporting of agricultural products. The term includes any related business the primary function of which is providing goods or services to an agricultural enterprise.

(3) "Company" means a natural person, firm, partnership, corporation, association, or other entity authorized to conduct business in the state.

(4) "Council" means the Montana agriculture development council established in 2-15-3015.

(5) "Department" means the department of agriculture established in 2-15-3001.

(6) "Educational loan" means a loan made pursuant to a federal loan program, except for a federal parent loan for undergraduate students (PLUS) loan, as provided in 20 U.S.C. 1078-2, or a loan made by a private lender expressly for the payment of the borrower's college expenses. A portion of a consolidated loan may be considered if the qualifying amount can be determined fairly.

(7) "Educational loan servicer" means an entity that engages for compensation or gain from another or on its own behalf, in the business of:

(a) receiving any scheduled periodic payments from a borrower pursuant to the terms of an educational loan;

(b) applying the payments of principal and interest and other payments with respect to the amounts received from a borrower, as may be required pursuant to the terms of an educational loan; and

(c) performing other administrative services with respect to an educational loan.

(8) "Farmer" means a person who:

(a) is engaged in agricultural activities, including ranching, at a farm;

(b) participates in the day-to-day operations of a farm; and

(c) is the primary owner of an agricultural operation, including an heir, a successor, or an assignee of the operation.

(9) "Federal loan program" has the meaning provided in 20-4-502.

(10) (a) "Matching funds" means the funds received by the loan or grant recipient from private, federal, state, or commodity checkoff funds and contributed by the recipient in support of a loan or grant application in an amount that is at least equal to the funds disbursed to the recipient by the council.

(b) Matching funds may not include other state grants.

(11) "State" means the state of Montana. *(Terminates June 30, 2029—sec. 16, Ch. 439, L. 2019.)*

90-9-103. *(Effective July 1, 2029)* **Definitions.** As used in this chapter, the following definitions apply:

(1) "Act" means the Montana Growth Through Agriculture Act.

(2) "Agricultural business" means an enterprise engaged in the production, processing, marketing, distribution, or exporting of agricultural products. The term includes any related business the primary function of which is providing goods or services to an agricultural enterprise.

(3) "Company" means a natural person, firm, partnership, corporation, association, or other entity authorized to conduct business in the state.

(4) "Council" means the Montana agriculture development council established in 2-15-3015.

(5) "Department" means the department of agriculture established in 2-15-3001.

(6) (a) "Matching funds" means the funds received by the loan or grant recipient from private, federal, state, or commodity checkoff funds and contributed by the recipient in support of a loan or grant application in an amount that is at least equal to the funds disbursed to the recipient by the council.

(b) Matching funds may not include other state grants.

(7) "State" means the state of Montana.

History: En. Sec. 4, Ch. 665, L. 1987; amd. Sec. 10, Ch. 284, L. 1989; amd. Sec. 1, Ch. 189, L. 1991; amd. Sec. 1, Ch. 171, L. 2001; amd. Sec. 2, Ch. 106, L. 2009; amd. Sec. 8, Ch. 439, L. 2019; amd. Sec. 1, Ch. 58, L. 2021.

90-9-104. Growth through agriculture account. There is a growth through agriculture account in the state special revenue fund established by 17-2-102 to be administered by the department of agriculture for providing funding for the growth through agriculture program.

History: En. Sec. 7, Ch. 351, L. 2017.

Part 2
Agriculture Development Council

Part Cross-References

Montana Agriculture Development Council — creation, 2-15-3015.

90-9-201. Council organization — meetings. (1) The members of the council shall select a member as presiding officer. The council may establish other offices and select council members to fill these offices.

(2) The council shall meet quarterly and at other times as determined by the presiding officer or a majority of the council.

(3) Each committee member, except the director of the department and the director of the department of commerce, is entitled to:

(a) compensation as provided in 2-15-122 for each day that the member is engaged in the transaction of official business, including travel to and from official business; and

(b) necessary travel expenses as provided in 2-18-501 through 2-18-503.

History: **En. Sec. 5, Ch. 665, L. 1987; amd. Sec. 2, Ch. 171, L. 2001; amd. Sec. 6, Ch. 30, L. 2015.**

90-9-202. *(Temporary)* **Powers and duties of council.** (1) The council shall:

(a) establish policies and priorities to enhance the future development of agriculture in Montana, including the Indian reservations in the state;

(b) make loans or grants, pursuant to the provisions of Title 90, chapter 9, part 3, that have a short-term or long-term ability to stimulate agriculture development and diversification in rural, urban, and tribal settings in Montana;

(c) provide loan repayment assistance for farmers pursuant to Title 90, chapter 9, part 5;

(d) consult with the cooperative extension service to administer the Montana farmer loan repayment assistance program as required by 90-9-501;

(e) accept grants or receive devises of money or property for use in making the loans or grants and providing the loan repayment assistance authorized by this chapter; and

(f) distribute food and agricultural development center funding pursuant to Title 80, chapter 11, part 9, subject to biannual review.

(2) The council may:

(a) defer or forgive any loan in whole or in part; and

(b) forgive any accrued interest in whole or in part. *(Terminates June 30, 2029—sec. 16, Ch. 439, L. 2019.)*

90-9-202. *(Effective July 1, 2029)* **Powers and duties of council.** (1) The council shall:

(a) establish policies and priorities to enhance the future development of agriculture in Montana, including the Indian reservations in the state;

(b) make loans or grants, pursuant to the provisions of Title 90, chapter 9, part 3, that have a short-term or long-term ability to stimulate agriculture development and diversification in rural, urban, and tribal settings in Montana;

(c) accept grants or receive devises of money or property for use in making the loans or grants authorized by this chapter; and

(d) distribute food and agricultural development center funding pursuant to Title 80, chapter 11, part 9, subject to biannual review.

(2) The council may:

(a) defer or forgive any loan in whole or in part; and

(b) forgive any accrued interest in whole or in part.

History: **En. Sec. 6, Ch. 665, L. 1987; amd. Sec. 11, Ch. 284, L. 1989; amd. Sec. 13, Ch. 512, L. 1999; amd. Sec. 3, Ch. 171, L. 2001; amd. Sec. 3, Ch. 106, L. 2009; amd. Sec. 9, Ch. 343, L. 2019; amd. Sec. 9, Ch. 439, L. 2019.**

90-9-203. *(Temporary)* **Rulemaking.** The council shall adopt rules necessary to implement the provisions of this chapter, including rules:

(1) governing the conduct of council business;

(2) establishing application procedures for loans and grants authorized in 90-9-202;

(3) establishing application procedures and required documentation for the Montana farmer loan repayment assistance program pursuant to 90-9-504;

(4) establishing procedures to be followed by the council in its review process prior to making a loan or grant or providing loan repayment assistance;

(5) establishing postdisbursement activities to monitor the use of a loan or grant by its recipient, including:

(a) any reporting requirements; and

(b) procedures for repayment of a loan or grant upon failure of a recipient to meet the terms and conditions of that loan or grant;

(6) establishing interest rates for loans in accordance with market factors and the purposes of this chapter;

(7) limiting the amount of loans or grants that any company may receive or apply for over a given period of time;

(8) governing the deferral or forgiveness of loans and any accrued interest; and

(9) establishing other terms and conditions of loans and grants and loan repayment assistance, as necessary, within the requirements and purposes of this chapter. *(Terminates June 30, 2029—sec. 16, Ch. 439, L. 2019.)*

90-9-203. *(Effective July 1, 2029)* **Rulemaking.** The council shall adopt rules necessary to implement the provisions of this chapter, including rules:

(1) governing the conduct of council business;

(2) establishing application procedures for loans and grants authorized in 90-9-202;

(3) establishing procedures to be followed by the council in its review process prior to making a loan or grant;

(4) establishing postdisbursement activities to monitor the use of a loan or grant by its recipient, including:

(a) any reporting requirements; and

(b) procedures for repayment of a loan or grant upon failure of a recipient to meet the terms and conditions of that loan or grant;

(5) establishing interest rates for loans in accordance with market factors and the purposes of this chapter;

(6) limiting the amount of loans or grants that any company may receive or apply for over a given period of time;

(7) governing the deferral or forgiveness of loans and any accrued interest; and

(8) establishing other terms and conditions of loans and grants, as necessary, within the requirements and purposes of this chapter.

History: En. Sec. 9, Ch. 284, L. 1989; amd. Sec. 4, Ch. 171, L. 2001; amd. Sec. 4, Ch. 106, L. 2009; amd. Sec. 10, Ch. 439, L. 2019.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3
Grants and Loans

90-9-301. Agriculture seed capital account — matching funds. (1) There is an agriculture seed capital account administered by the council. Money received by the council under 90-9-306 must be deposited in this account.

(2) The council may loan or grant money from the agriculture seed capital account, pursuant to the provisions of 90-9-308 through 90-9-311.

History: En. Sec. 7, Ch. 665, L. 1987; amd. Sec. 12, Ch. 284, L. 1989; amd. Sec. 5, Ch. 171, L. 2001; amd. Sec. 5, Ch. 106, L. 2009.

90-9-302. Repealed. Sec. 2, Ch. 189, L. 1991.

History: En. Sec. 8, Ch. 665, L. 1987; amd. Sec. 13, Ch. 284, L. 1989.

90-9-303. Repealed. Sec. 14, Ch. 106, L. 2009.

History: En. Sec. 9, Ch. 665, L. 1987; amd. Sec. 6, Ch. 171, L. 2001.

90-9-304 and 90-9-305 reserved.

90-9-306. *(Temporary)* **Appropriation authority and funding — prohibitions.** (1) The council may accept and expend the funds that it receives from grants, donations, or other private or public income, including amounts repaid as principal and interest on loans made by the council. These funds are statutorily appropriated to the council, as provided in 17-7-502, for the purposes of this chapter, except that expenditures for actual and necessary expenses required for the efficient administration of this chapter must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(2) No more than $100,000 of the funds expended by the council in the biennium beginning July 1, 2019, may be expended for the purposes of the Montana farmer loan repayment assistance program provided for in Title 90, chapter 9, part 5. The council may use the unspent funds for grants, loans, or other program costs pursuant to this chapter.

(3) Council members may not personally apply for or receive council funds. If an organization with which a member is affiliated applies for council funds, the member shall disclose the nature of the affiliation and, if the council member is a board member or officer of

the organization, may not participate in the decision of the council regarding the application. *(Terminates June 30, 2029—sec. 16, Ch. 439, L. 2019.)*

90-9-306. *(Effective July 1, 2029)* **Appropriation authority and funding — prohibitions.** (1) The council may accept and expend the funds that it receives from grants, donations, or other private or public income, including amounts repaid as principal and interest on loans made by the council. These funds are statutorily appropriated to the council, as provided in 17-7-502, for the purposes of this chapter, except that expenditures for actual and necessary expenses required for the efficient administration of this chapter must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(2) Council members may not personally apply for or receive council funds. If an organization with which a member is affiliated applies for council funds, the member shall disclose the nature of the affiliation and, if the council member is a board member or officer of the organization, may not participate in the decision of the council regarding the application.

History: En. Sec. 10, Ch. 665, L. 1987; amd. Sec. 14, Ch. 284, L. 1989; amd. Sec. 13, Ch. 628, L. 1989; amd. Sec. 7, Ch. 171, L. 2001; amd. Sec. 6, Ch. 106, L. 2009; amd. Sec. 11, Ch. 439, L. 2019.

Cross-References

Public employees and officers — standards of conduct, Title 2, ch. 2.

90-9-307. Accountability. The council shall develop independent review and audit procedures to ensure that loans and grants made by it are used for the specified purposes.

History: En. Sec. 11, Ch. 665, L. 1987; amd. Sec. 15, Ch. 284, L. 1989; amd. Sec. 7, Ch. 106, L. 2009.

90-9-308. Application for loans and grants — additional criteria. (1) All applicants shall complete an application and provide financial information as established by rule.

(2) The council may not make a loan or grant unless the recipient provides matching funds prior to the expenditure of any state funds. The council may accept as matching funds those funds expended by the recipient within 1 year prior to the execution of the loan or grant.

(3) The department may provide assistance to applicants during the application process.

History: En. Sec. 11, Ch. 106, L. 2009.

90-9-309. Terms and conditions of loans. (1) The term of any loan may not exceed 8 years.

(2) The amount of any loan may not exceed $100,000 in any 9-month period.

(3) Repayment of a loan is due in full upon dissolution or liquidation of the recipient company.

(4) The council may make a low-interest loan, at a rate established by rule, only if it determines that the applicant meets the criteria set forth in 90-9-308 and 90-9-311 and the applicant:

(a) has unencumbered collateral to secure the full amount of the loan; or

(b) meets other requirements established by rule.

(5) The council may make a high-interest loan, at a rate established by rule, only if it determines that the applicant meets the criteria set forth in 90-9-308 and 90-9-311.

(6) The council may establish other terms and conditions by rule.

History: En. Sec. 12, Ch. 106, L. 2009.

90-9-310. Terms and conditions of grants. (1) A grant does not accrue interest, but is contingent on the funds being used for the specified purpose.

(2) The council may make a grant of up to $50,000 if an application meets all of the criteria set forth in 90-9-308 and 90-9-311 and one of the following applies:

(a) the proposal will benefit agricultural companies in addition to the applicant;

(b) the proposal will accomplish research that benefits agriculture as a whole; or

(c) the applicant is a nonprofit entity.

(3) The council may award a grant of up to $2,500 for educational, promotional, marketing, travel, or other business expenses related to agricultural development. These grants are not subject to the criteria set forth in 90-9-308 or 90-9-311.

History: En. Sec. 13, Ch. 106, L. 2009.

90-9-311. General criteria underlying loans and grants. The council may make a loan or grant only if the council determines that:

(1) the loan or grant is consistent with the findings and purposes of this chapter because it primarily adds value to Montana's agricultural products;

(2) the project for which the loan or grant is made has prospects for achieving commercial success given the current personnel, experience, and resources of the applicant;

(3) the project for which the loan or grant is made is anticipated to create new jobs or retain existing jobs in the state;

(4) the loan or grant is primarily intended to be used for processing or adding value to agricultural products produced or potentially produced in the state; and

(5) the applicant has a management structure that allows the council to reasonably conclude that the applicant will comply with ongoing reporting requirements and postdisbursement monitoring activities established by the council.

History: En. Sec. 1, Ch. 284, L. 1989; amd. Sec. 8, Ch. 171, L. 2001; amd. Sec. 8, Ch. 106, L. 2009.

90-9-312. Repealed. Sec. 14, Ch. 106, L. 2009.

History: En. Sec. 2, Ch. 284, L. 1989; amd. Sec. 9, Ch. 171, L. 2001.

90-9-313. Repealed. Sec. 14, Ch. 106, L. 2009.

History: En. Sec. 3, Ch. 284, L. 1989; amd. Sec. 10, Ch. 171, L. 2001.

90-9-314. Repealed. Sec. 14, Ch. 106, L. 2009.

History: En. Sec. 4, Ch. 284, L. 1989.

90-9-315. Repealed. Sec. 14, Ch. 106, L. 2009.

History: En. Sec. 5, Ch. 284, L. 1989.

90-9-316. Repealed. Sec. 14, Ch. 106, L. 2009.

History: En. Sec. 6, Ch. 284, L. 1989; amd. Sec. 11, Ch. 171, L. 2001.

90-9-317. Repealed. Sec. 14, Ch. 106, L. 2009.

History: En. Sec. 7, Ch. 284, L. 1989.

90-9-318. Repealed. Sec. 12, Ch. 171, L. 2001.

History: En. Sec. 8, Ch. 284, L. 1989.

Part 4

Marketing — Export Assistance

90-9-401. Agricultural marketing enhancement. As directed by the council, the department shall assist in identification and development of new domestic and foreign markets for Montana agricultural products. This includes:

(1) assisting in placing one full-time professional marketing person in Japan or another Pacific Rim country to develop export marketing opportunities in the Pacific region;

(2) providing assistance for appropriate trade missions of Montana producers, processors, or distributors of agricultural products on a cost-share basis; and

(3) assisting in other appropriate means of enhancing domestic markets for Montana agricultural products.

History: En. Sec. 12, Ch. 665, L. 1987; amd. Sec. 16, Ch. 284, L. 1989; amd. Sec. 9, Ch. 106, L. 2009.

90-9-402. Export finance assistance. As directed by the council, the department shall provide professional assistance to persons who apply for financial assistance for the purpose of developing export sales of Montana agricultural products.

History: En. Sec. 13, Ch. 665, L. 1987; amd. Sec. 10, Ch. 106, L. 2009.

Part 5

Farmer Loan Repayment Assistance Program

90-9-501. *(Temporary)* **Montana farmer loan repayment assistance program.** There is a Montana farmer loan repayment assistance program administered by the council in consultation with the cooperative extension service. The program must provide for the direct repayment of educational loans of eligible farmers in accordance with the rules adopted by the council pursuant to 90-9-203 to implement this part. *(Terminates June 30, 2029—sec. 16, Ch. 439, L. 2019.)*

History: En. Sec. 1, Ch. 439, L. 2019.

90-9-502. *(Temporary)* **Eligibility — amount of loan repayment assistance.** (1) A farmer is qualified for loan repayment assistance if the farmer:

(a) is a resident of Montana whose primary occupation is to operate a farm;

(b) has graduated from a postsecondary institution as defined in 20-26-603 with an associate degree or a baccalaureate degree; and

(c) commits to operate the farm for at least 5 years after applying for loan repayment assistance pursuant to this part.

(2) A farmer who is qualified pursuant to subsection (1) is eligible for loan repayment assistance for up to a maximum of 5 years.

(3) The total amount of loan repayment assistance for an eligible qualified farmer may not exceed 50% of the total amount of educational loans outstanding on the application date for loan repayment assistance.

(4) A farmer who qualifies for and receives loan repayment assistance shall repay that assistance if the farmer ceases to operate the farm before the end of the 5-year commitment. *(Terminates June 30, 2029—sec. 16, Ch. 439, L. 2019.)*

History: En. Sec. 2, Ch. 439, L. 2019; amd. Sec. 13, Ch. 14, L. 2021.

90-9-503. *(Temporary)* **Payments to be made directly to educational loan servicer.** (1) In administering the Montana farmer loan repayment assistance program, the council shall ensure the payments on behalf of a qualified farmer are paid directly to the educational loan servicer.

(2) A qualified farmer may choose whether the council makes one annual payment or 12 monthly payments to the educational loan servicer for each year of a qualified farmer's eligibility for loan repayment assistance. *(Terminates June 30, 2029—sec. 16, Ch. 439, L. 2019.)*

History: En. Sec. 3, Ch. 439, L. 2019.

90-9-504. *(Temporary)* **Loan repayment assistance documentation.** A qualified farmer shall submit an application for loan repayment assistance to the council in accordance with rules adopted by the council. The application must include official verification or proof of the applicant's total unpaid accumulated educational loan debt and other documentation required by the council that is necessary to verify the applicant's eligibility. *(Terminates June 30, 2029—sec. 16, Ch. 439, L. 2019.)*

History: En. Sec. 4, Ch. 439, L. 2019.

90-9-505. *(Temporary)* **Funding — priorities.** If the funding for this part in any year is less than the total amount of loan repayment assistance for which farmers qualify, the council shall work with the cooperative extension service to develop a method to prioritize loan repayment assistance to applicants. In developing a prioritization method, the council shall consider giving priority to applicants:

(1) with the greatest financial need;

(2) who are most likely to successfully continue operating a farm based on factors including an applicant's interest in farming, training, experience, business plan, and relationship with a mentor;

(3) who own or are working toward ownership of a farm;

(4) who operate farms that employ sustainable best practices for farming that are identified in the list of approved conservation enhancements and practices under the conservation stewardship program of the U.S. department of agriculture; and

(5) are members of groups that are underrepresented in farming in Montana. *(Terminates June 30, 2029—sec. 16, Ch. 439, L. 2019.)*

History: En. Sec. 5, Ch. 439, L. 2019.

CHAPTER 10
MONTANA EQUITY CAPITAL INVESTMENT ACT
(Repealed)

Part 1 — General Provisions (Repealed)
Part 2 — Capital Investment Board (Repealed)
Part 3 — Tax Credits and Investments — Reports and Audits (Repealed)

Part 1
General Provisions
(Repealed)

90-10-101. Repealed. Sec. 3, Ch. 309, L. 2009.
History: **En. Sec. 1, Ch. 537, L. 2005.**

90-10-102. Repealed. Sec. 3, Ch. 309, L. 2009.
History: **En. Sec. 2, Ch. 537, L. 2005.**

90-10-103. Repealed. Sec. 3, Ch. 309, L. 2009.
History: **En. Sec. 3, Ch. 537, L. 2005.**

Part 2
Capital Investment Board
(Repealed)

90-10-201. Repealed. Sec. 3, Ch. 309, L. 2009.
History: **En. Sec. 4, Ch. 537, L. 2005.**

90-10-202. Repealed. Sec. 3, Ch. 309, L. 2009.
History: **En. Sec. 5, Ch. 537, L. 2005.**

Part 3
Tax Credits and Investments — Reports and Audits
(Repealed)

90-10-301. Repealed. Sec. 3, Ch. 309, L. 2009.
History: **En. Sec. 6, Ch. 537, L. 2005.**

90-10-302. Repealed. Sec. 3, Ch. 309, L. 2009.
History: **En. Sec. 7, Ch. 537, L. 2005.**

90-10-303. Repealed. Sec. 3, Ch. 309, L. 2009.
History: **En. Sec. 8, Ch. 537, L. 2005.**

90-10-304. Repealed. Sec. 3, Ch. 309, L. 2009.
History: **En. Sec. 9, Ch. 537, L. 2005.**

90-10-305. Repealed. Sec. 3, Ch. 309, L. 2009.
History: **En. Sec. 10, Ch. 537, L. 2005.**

90-10-306. Repealed. Sec. 3, Ch. 309, L. 2009.
History: **En. Sec. 11, Ch. 537, L. 2005.**

90-10-307. Repealed. Sec. 3, Ch. 309, L. 2009.
History: **En. Sec. 12, Ch. 537, L. 2005.**

90-10-308. Repealed. Sec. 3, Ch. 309, L. 2009.
History: **En. Sec. 13, Ch. 537, L. 2005.**

90-10-309. Repealed. Sec. 3, Ch. 309, L. 2009.
History: **En. Sec. 14, Ch. 537, L. 2005.**

90-10-310. Repealed. Sec. 3, Ch. 309, L. 2009.
History: **En. Sec. 15, Ch. 537, L. 2005.**

CHAPTER 11
INDIAN AFFAIRS
PLANNING AND COORDINATION

Part 1 — State Director of Indian Affairs
90-11-101. Legislative policy.
90-11-102. Duties and assistance.

Chapter Cross-References

Compact with United States, Art. I, Mont. Const.
Educational goals and duties — preservation of Indian heritage and culture, Art. X, sec. 1, Mont. Const.
Cession and retrocession of jurisdiction over Blackfeet highway, 2-1-206.
Jurisdiction on Indian lands, Title 2, ch. 1, part 3.
Tourism Advisory Council, 2-15-1816.
Federal funds for welfare of Indians, 17-3-107.
State-tribal cooperative agreements, Title 18, ch. 11.
Tribal agreement with district for Indian child compulsory attendance and other agreements, 20-5-108.
Cultural and aesthetic grants, Title 22, ch. 2, part 3.
Montana Historical Society — authority of Board, 22-3-107.
Sale of imitation Indian articles, Title 30, ch. 14, part 6.
Solemnization of Indian marriage, 40-1-301.
Parent-child legal relationship termination — not to disentitle to tribal benefits, 41-3-611.
Indian and federal water rights, Title 85, ch. 2, part 7.
Fort Peck — Montana Compact, 85-20-201.
Agreement with Indians concerning hunting and fishing — Indian treaty of 1855, 87-1-228.
Promotion of Indian tourism activities, 90-1-104.
Indian reservations — promotion and enhancement of economic opportunities, 90-1-105.

Part 1
State Director of Indian Affairs

Part Cross-References

Office of State Director of Indian Affairs — Governor's Office, 2-15-217.

90-11-101. Legislative policy. The legislature finds and declares that:

(1) a considerable portion of the citizens of the state of Montana are American Indians;

(2) since statehood, Indian citizens of the state of Montana have lived on reservations set apart for those purposes by the United States of America, and by virtue of their isolation and supervision by the federal government, great problems of economic and social significance have arisen and presently exist;

(3) the best interests of Montana Indian tribes will be served by engaging in government-to-government relationships designed to recognize the rights, duties, and privileges of full citizenship that Indians are entitled to as citizens of this state;

(4) because the tribes are domestic dependent nations, agencies of the federal government retain jurisdiction and a fiduciary duty throughout the state of Montana for the administration of economic, social, health, education, and welfare programs for Indians;

(5) unique differences exist between the tribes, their reservations, customs, and treaties, and their respective relationships with the federal government, all of which influence the relationships among tribes and between the tribes and the state;

(6) there are sizeable numbers of off-reservation enrolled and unenrolled Indians residing in our state whose needs for social, environmental, educational, and economic assistance are borne in part by state and local agencies;

(7) programs of the state of Montana should not duplicate those supported by agencies of the federal government or tribal governments with regard to jurisdiction of Indian people, because state responsibility includes off-reservation Indians and because those Indians require assistance to coordinate their affairs with various tribal groups and federal agencies where they have no official recognition;

(8) the state and the tribes working together in a government-to-government relationship and engaging in compacts and other cooperative agreements for the benefit of Indian and non-Indian residents will promote economic development, environmental protection, education, social services support, and enduring good will;

(9) to facilitate the discussion and resolution of issues and concerns that Indian tribes have in relation to the state, the federal government, and among themselves, the state director of Indian affairs, established in 2-15-217, shall:

(a) maintain effective tribal-state communications;

(b) assess tribal and individual Indian concerns and interests to seek ways and means of communicating these concerns and interests to relevant state agencies and to the legislature and actively assist in organizing these efforts; and

(c) act as a liaison for tribes and Indian people, whether the Indian people reside on or off reservations, whenever assistance is required;

(10) the state director of Indian affairs shall endeavor to assist tribes to seek agreements between the state and tribes and to work toward a consensus among the tribes and other parties on shared goals and principles.

History: En. Sec. 1, Ch. 203, L. 1951; amd. Sec. 1, Ch. 319, L. 1969; amd. Sec. 1, Ch. 160, L. 1974; R.C.M. 1947, 82-2701; MCA 1979, 2-15-1112; redes. 90-11-101 by Sec. 20, Ch. 274, L. 1981; amd. Sec. 1, Ch. 178, L. 2001; amd. Sec. 11, Ch. 164, L. 2009; amd. Sec. 6, Ch. 594, L. 2023.

Cross-References

Affirmation of disclaimer — compact with United States, Art. I, Mont. Const.
Educational goals for preservation of Indian culture, Art. X, sec. 1, Mont. Const.
Disclaimer of rights to Indian lands, The Enabling Act, sec. 4 (see anno. vol. 1).

90-11-102. Duties and assistance. (1) It is the duty of the state director of Indian affairs, established in 2-15-217, to carry out the legislative policy set forth in 90-11-101.

(2) The state director shall:

(a) meet at least quarterly with tribal governments and become acquainted with the problems confronting the Indians of Montana;

(b) meet with executive branch directors on issues arising between Montana's Indian citizens, tribes, and state agency personnel and programs;

(c) report to the governor's cabinet meeting concerning issues confronting Indian people and tribal governments;

(d) advise the legislative and executive branches of the state of Montana of those problems and issues;

(e) make recommendations for the alleviation of those problems and issues;

(f) serve the Montana delegation in the federal congress as an adviser and intermediary in the field of Indian affairs;

(g) act as a liaison for representative Indian organizations and groups, public and private, whenever the state director's support is solicited by tribal governmental entities;

(h) serve on the state-tribal economic development commission established in 90-1-131; and

(i) report in detail at every meeting of the state-tribal relations committee those actions taken by the state-tribal economic development commission established by 90-1-131 to carry out its duties.

(3) All executive and legislative agencies of state government may within the area of their expertise and authority provide assistance to tribal councils or their official designees requesting assistance on any matter relating to education, health, natural resources, and economic development on Indian reservation lands.

History: (1), (2)En. Sec. 3, Ch. 203, L. 1951; amd. Sec. 3, Ch. 319, L. 1969; amd. Sec. 3, Ch. 160, L. 1974; Sec. 82-2703, R.C.M. 1947; (3)En. Sec. 1, Ch. 221, L. 1973; Sec. 82-2705, R.C.M. 1947; R.C.M. 1947, 82-2703, 82-2705; MCA 1979, 2-15-1113; redes. 90-11-102 by Sec. 20, Ch. 274, L. 1981; amd. Sec. 14, Ch. 512, L. 1999; amd. Sec. 3, Ch. 69, L. 2001; amd. Sec. 2, Ch. 178, L. 2001; amd. Sec. 12, Ch. 164, L. 2009; amd. Sec. 137, Ch. 261, L. 2021; amd. Sec. 7, Ch. 594, L. 2023.

Cross-References

State-tribal economic development commission, 90-1-131.

CHAPTERS 12 AND 13
RESERVED

CHAPTER 14
COMMUNITY SERVICE

Part 1 — Montana Community Service Act

90-14-101. Short title.
90-14-102. Definitions.
90-14-103. Office of community service.
90-14-104. Commission on community service.
90-14-105. Duties and powers of state agencies.
90-14-106. Prohibited activities.
90-14-107. Office of community service — accounts.
90-14-108. Indemnification for Montana community service act.
90-14-109. Coordination requirements — coordination of programs.
90-14-110. Contracts and cooperative agreements authorized under part.

Part 1
Montana Community Service Act

90-14-101. Short title. This part may be cited as the "Montana Community Service Act".

History: En. Sec. 1, Ch. 534, L. 1993.

90-14-102. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Commission" means the commission on community service appointed by the governor to assist in implementation of this part.

(2) "Community service" means any kind of public service that provides a benefit to the state of Montana, any of its political subdivisions, or a tribal government or that benefits disadvantaged or low-income persons, disabled persons, or senior citizens of Montana.

(3) "Director" means the person appointed by the governor as the community service director to administer and coordinate the provisions of this part.

(4) "Program" means the Montana community service program, which includes all of the volunteer projects established under this part.

(5) "Volunteer" means a person performing services under this part for an association, not-for-profit corporation, hospital, school, or state, local, or tribal governmental entity without compensation, except that partial or full reimbursement may be made for actual expenses incurred.

History: En. Sec. 2, Ch. 534, L. 1993; amd. Sec. 2, Ch. 150, L. 1999.

90-14-103. Office of community service. (1) There is an office of community service, which is headed by a director and established in the department of labor and industry.

(2) The purpose of this office is to:

(a) renew the ethic of civic responsibility in the state;

(b) encourage the citizens of the state, regardless of age or income, to engage in full-time or part-time service to the state;

(c) call young people to serve in projects that will benefit the state and improve their life chances through the acquisition of literacy, job skills, and interpersonal skills;

(d) build on the existing organizational framework of state and local governmental entities to expand full-time and part-time service opportunities in a wide variety of programs for all citizens, particularly youth and older Montanans;

(e) involve participants in activities that would not otherwise be performed by employed workers; and

(f) establish programs to accomplish labor-intensive improvements to public or low-income properties or to provide services for the benefit of the state, its communities, and its people through service contracts that specify the work to be performed.

(3) The director must be appointed by the governor, after consultation with the commission. The director serves at the pleasure of the governor.

(4) The director, with the advice of the commission and in coordination with the department, shall:

(a) assist the governor in the planning, coordination, operation, and evaluation of programs within state government or under grants, donations, bequests, or other resources received by and administered through state government for Montana community services;

(b) integrate and develop state plans for all services provided under this part, including but not limited to the office of public instruction's service learning program, the Montana university system's innovative projects, the department of military affairs' service involvement, and other community and volunteer service programs; and

(c) submit applications for federal grants and for funding from any other sources for the creation or operation of volunteer projects. The director shall ensure accountability for all resources received.

History: En. Sec. 3, Ch. 534, L. 1993; amd. Sec. 3, Ch. 150, L. 1999; amd. Sec. 1, Ch. 85, L. 2007; amd. Sec. 2, Ch. 337, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 337, L. 2025. Amendment effective October 1, 2025.

90-14-104. Commission on community service. (1) The governor shall appoint a commission on community service composed of up to 15 members.

(2) Members must include a representative from a tribal government and from at least four state agencies in the following functional areas:

(a) natural resources;
(b) human services;
(c) labor;
(d) K-12 education;
(e) higher education; and
(f) military affairs.

(3) Members may include representatives from local government, not-for-profit agencies, federal agencies, business, labor unions, volunteer groups, and private citizens.

(4) To the extent possible, membership of the commission must be balanced according to race, ethnicity, age, gender, and disabilities.

(5) The commission shall assist in the development and coordination of state community service programs, integration of services, dissemination of information, recruitment of volunteers, recruitment and training of volunteer crewleaders, development of materials, and evaluation of and accountability for the services provided.

(6) Commission members are entitled to payment and reimbursement as provided in 2-15-122(5).

History: En. Sec. 4, Ch. 534, L. 1993; amd. Sec. 4, Ch. 150, L. 1999.

90-14-105. Duties and powers of state agencies. (1) The following state agencies are responsible for developing and implementing community service opportunities consistent with the mission and functions of each agency:

(a) The office of public instruction implements volunteer projects in elementary and secondary public, private, and home schools in Montana, including activities sponsored by schools or community-based agencies, to involve school-age youth, including dropouts and out-of-school youth, in service to the community, as well as for programs that involve adult volunteers in the schools. A school district is expected to be the first agency that informs students about the many opportunities to participate in broader community service under this part through federal service learning grants and any other revenue received for purposes consistent with this part.

(b) The Montana university system assists institutions of higher education in Montana, explores new ways to integrate service into the curriculum, supports model community service programs on campus, develops teacher and volunteer training programs, and involves students in community service. The community service may complement a student's course of study through the federal higher education innovative projects grants and any other revenue received for purposes consistent with this part.

(c) The departments of environmental quality, natural resources and conservation, transportation, and fish, wildlife, and parks are the agencies for community and volunteer projects in conservation and natural resource settings that are designed to support and enhance state parks, wildlife, watchable wildlife, productivity of state lands, streams and lakes, county and city parks, tribal parks, scenic beauty and access, trails and signs, visitor information centers and rest areas, fairgrounds, and any other projects related to conservation or the environment that involve teenagers, young adults, or special community service members, such as adults or senior citizens who provide special skills for a project. Other projects may include bicycle paths and pedestrian trails, landscaping and scenic enhancements, historical and cultural preservation, roadside and stream restoration and enhancement, erosion control, disability enhancement, and experimental and research projects.

(d) The department of military affairs may support community and volunteer projects that are designed to involve the national guard in leadership or support roles for service through the provision of organizational and leadership skills, equipment, volunteer crewleaders, and other support, as well as the command and coordination of activities that may be mobilized for emergency projects, such as fire suppression or search and rescue.

(e) The governor may designate other agencies, after consultation with the director and the commission, for community service projects that focus on improving the quality of life for all Montanans, particularly low-income persons, senior citizens, homebound persons, disabled persons, or institutionalized persons, through preparing and delivering meals, assisting with shopping or other tasks, repairing and painting or otherwise modifying homes of qualifying persons, providing transportation to and from health care and other appointments, providing respite care, cataloging library books, assisting rural health care providers, providing recreational aides, arranging for tutoring and literacy training, restoring historical photographs, and offering other human service support and community services.

(2) Each agency designated by the governor shall ensure that service opportunities that result in a public value are developed for everyone, regardless of race, creed, national origin, or geographical location, by providing leadership through its own network and by forming partnerships with other public or private, nonprofit entities.

(3) Each agency involved in community service shall coordinate and integrate its plans with and through the office of community service.

(4) Projects developed or approved under this part and funded by an agency must be limited to service projects that provide community service, conservation service, educational service, or other public service and that provide documented public value or benefit.

(5) The state agencies engaged in community service may:

(a) designate an agency volunteer coordinator to implement its responsibilities under this part;

(b) develop and approve work experience and volunteer projects that meet the requirements of this part;

(c) execute contracts or cooperative agreements that contain the terms and conditions necessary and desirable for the employment of volunteer crewleaders and other volunteers in approved work experience projects with federal, state, or local agencies, persons, firms, partnerships, associations, or corporations;

(d) execute contracts or cooperative agreements with federal, state, or local agencies, persons, firms, partnerships, associations, or corporations for the purpose of administering the requirements of this part;

(e) under the supervision of the office of community service, apply for and accept grants or contributions of services, funds, or lands from any public or private donors, including appropriations;

(f) develop procedures for participants to achieve incentive vouchers, education, credit toward education, skill training, scholarships, housing benefits, or other benefits upon completion of their term of service;

(g) purchase, rent, acquire, or obtain personal property, supplies, instruments, tools, or equipment necessary to complete work experience or volunteer projects;

(h) authorize use of volunteers for emergency projects, including but not limited to natural disasters, fire prevention and suppression, and rescue of lost or injured persons, and provide adequate training to volunteers prior to participation in an emergency project; and

(i) adopt rules and guidelines necessary to implement the provisions of this part and to effectively administer the program.

History: En. Sec. 5, Ch. 534, L. 1993; amd. Sec. 5, Ch. 150, L. 1999.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Duties and powers of department heads, 2-15-112.

90-14-106. Prohibited activities. (1) The office of community service and agencies listed in 90-14-105 that are designated by the governor and engaged in developing and approving work experience and volunteer projects shall ensure that:

(a) work available to participants is not available as the result of a labor dispute, strike, or lockout and will not be assigned to cause a layoff or downgrading of a position or to prevent the return to work of an available competent employee; and

(b) a work experience project:

(i) does not impair existing contracts for service or collective bargaining agreements; and

(ii) is not inconsistent with the terms of a collective bargaining agreement without written concurrence of the labor organization and employer concerned.

(2) It is unlawful for a person to demand from any public officer, agency, employee, volunteer, or volunteer crewleader an assessment or percentage of any money or profit or its equivalent in support, service, or any other thing of value, with the express or implied understanding that it will be used for political purposes. This part may not be construed to prohibit voluntary contributions to any political committee or organization for legitimate political purposes to the extent allowed by law.

History: En. Sec. 6, Ch. 534, L. 1993; amd. Sec. 6, Ch. 150, L. 1999.

90-14-107. Office of community service — accounts. (1) There is an account in the state special revenue fund. The office of community service and all participating agencies shall deposit any fee, grant, donation, or reimbursement received under this part into the account to be used to pay expenses for administering and providing service projects.

(2) There is an account in the federal special revenue fund. The office of community service and all participating agencies shall deposit any federal revenue received under the National and Community Service Act of 1990, Public Law 101-610, as amended, and any other federal revenue received related to the purposes and implementation of the provisions of this part into the account to be used to pay expenses for administering and providing service projects.

(3) Reimbursement may be provided to state agencies for work on private property or for other public service. In the case of emergencies and natural disasters, projects may take place on properties not owned by a public agency without regard to private reimbursement.

(4) The office of community service may transfer funds to participating state agencies for approved community service projects, and lead agencies may transfer funds between each other for cooperative projects. Disbursement authority follows any transfers.

(5) Funds for additional personal services, operating costs, and equipment costs may be appropriated.

History: En. Sec. 7, Ch. 534, L. 1993.

90-14-108. Indemnification for Montana community service act. The provisions of 2-9-305 apply to community service volunteers for actions arising from the discharge of assigned community service functions or duties.

History: En. Sec. 8, Ch. 534, L. 1993; amd. Sec. 7, Ch. 150, L. 1999.

90-14-109. Coordination requirements — coordination of programs. The governor shall ensure that program activities under this part be coordinated with similar programs administered under federal acts and programs already established in this state in order to maximize coordination of programs and to prevent overlapping and duplication of services.

History: En. Sec. 11, Ch. 534, L. 1993.

90-14-110. Contracts and cooperative agreements authorized under part. A contract or cooperative agreement may be authorized under this part for the purposes of an exemption from the Montana Procurement Act pursuant to 18-4-132(3)(k) only if:

(1) the contract implements a community service project consistent with the provisions of 90-14-105; and

(2) the contract does not involve an activity prohibited under 90-14-106.

History: En. Sec. 2, Ch. 431, L. 2019.

CHAPTER 15
NATURAL RESOURCE INFORMATION SYSTEM

Part 1 — General

90-15-101. Purpose.
90-15-102. Definitions.
90-15-103. Funding.

Part 2 — Advisory Committee (Repealed)

Part 3 — Information System

90-15-301. Establishment of information system.
90-15-302. Natural heritage program.
90-15-303. Interagency cooperation.
90-15-304. Availability of information.
90-15-305. Water information system.

Part 1
General

90-15-101. Purpose. It is the purpose of this chapter to establish a planning framework for the development of a natural resource information system, to implement the system, and to establish an ongoing Montana natural heritage program.

History: En. Sec. 1, Ch. 650, L. 1983; amd. Sec. 2, Ch. 395, L. 1985.

90-15-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Library" means the state library provided for in 22-1-201.

(2) "Natural heritage program" means a program of information acquisition, storage, and retrieval for data relating to the flora, fauna, and biological community types of Montana.

(3) "Principal data source agencies" means any of the following state agencies: the department of natural resources and conservation; the department of fish, wildlife, and parks; the department of environmental quality; the department of agriculture; the department of transportation; the state historical society; and the Montana university system.

History: En. Sec. 2, Ch. 650, L. 1983; amd. Sec. 3, Ch. 395, L. 1985; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 498, Ch. 418, L. 1995; amd. Sec. 14, Ch. 110, L. 2023.

90-15-103. Funding. The library and each principal data source agency may apply for and may receive funding from private and public sources for the purposes of this chapter.

History: En. Sec. 9, Ch. 650, L. 1983; amd. Sec. 4, Ch. 395, L. 1985; amd. Sec. 14, Ch. 628, L. 1989.

Part 2
Advisory Committee
(Repealed)

90-15-201. Repealed. Sec. 17, Ch. 110, L. 2023.

History: En. Sec. 3, Ch. 650, L. 1983; amd. Sec. 5, Ch. 395, L. 1985.

90-15-202. Repealed. Sec. 17, Ch. 110, L. 2023.

History: En. Sec. 3, Ch. 650, L. 1983; amd. Sec. 6, Ch. 395, L. 1985.

90-15-203. Repealed. Sec. 17, Ch. 110, L. 2023.

History: En. Sec. 3, Ch. 650, L. 1983.

Part 3
Information System

90-15-301. Establishment of information system. (1) The library shall establish a planning framework for the implementation of a natural resource information system and shall begin implementation of the plan. This system is to be a comprehensive program for the acquisition, storage, and retrieval of existing data relating to the natural resources of Montana.

(2) The library shall give attention to the following factors and shall prepare any legislation necessary to implement the system:

(a) the categories and types of data to be collected for a natural resource information system;

(b) the format of data collection;

(c) existing sources of relevant data in the public sector;

(d) data acquisition, storage, and retrieval methodologies that are economical and efficient, that minimize or eliminate the duplication of databases, and that use computer networking;

(e) probable costs to agencies furnishing required data and probable costs of managing the data;

(f) probable benefits to be realized by the establishment of a natural resource information system;

(g) operation of the Montana natural heritage program; and

(h) other items of importance to the establishment of a natural resource information system.

(3) It is not intended that the system shall require fieldwork to produce data. The system is intended to facilitate the management of data collected by state agencies in the normal course of their operations.

History: **En. Sec. 4, Ch. 650, L. 1983; amd. Sec. 7, Ch. 395, L. 1985; amd. Sec. 15, Ch. 110, L. 2023.**

Cross-References

State information and research system, 90-1-109.

90-15-302. Natural heritage program. (1) There is a Montana natural heritage program to be operated by the library. In order to establish the program, the library may contract with an independent contractor or may employ necessary staff. In order to minimize costs, the library or other state agencies may make available state resources and facilities to an independent contractor as part of a contract for services.

(2) The Montana natural heritage program shall be designed to be compatible with similar programs in other states. This program is to be an initial step in the formulation of the comprehensive natural resource information system referred to in 90-15-301 and is to be considered a part of the system.

History: **En. Sec. 5, Ch. 650, L. 1983; amd. Sec. 8, Ch. 395, L. 1985.**

90-15-303. Interagency cooperation. (1) State agencies shall cooperate with the library in the planning of the natural resource information system.

(2) Within the limits of available resources, state agencies shall provide data requested by the library for purposes of the natural resource information system and the Montana natural heritage program. If an agency does not possess requested data or is unable to locate requested data, the agency shall inform the library. It is not necessary for an agency to conduct fieldwork or literature searches to obtain requested data.

History: **En. Sec. 6, Ch. 650, L. 1983; amd. Sec. 9, Ch. 395, L. 1985; amd. Sec. 4, Ch. 45, L. 1997; amd. Sec. 16, Ch. 110, L. 2023.**

90-15-304. Availability of information. (1) Except as provided in subsection (3), the library shall make information from the natural resource information system available to local, state, and federal agencies and to the general public.

(2) The library may establish a fee system for information requests in order to cover the costs of providing requested information.

(3) If necessary, the library shall establish procedures to protect confidential information in the possession of state agencies.

History: **En. Sec. 7, Ch. 650, L. 1983; amd. Sec. 10, Ch. 395, L. 1985.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records generally, Title 2, ch. 6, part 10.

90-15-305. Water information system. (1) There is a Montana water information system, to be operated within the natural resource information system referred to in 90-15-301 and that is to be considered a part of the system.

(2) The Montana water information system shall make available and readily accessible, in a usable format, to state agencies and other interested persons, information on the state's water resources, out-of-state water resources that affect the state, existing and potential uses, and the existing and potential demand.

History: En. Sec. 3, Ch. 45, L. 1997.

Cross-References

Drought and Water Supply Advisory Committee, 2-15-3308.
Water Use, Title 85.

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(2) The library shall give attention to the following factors and shall prepare [illegible]

(a) the categories and types of data to be collected for a natural resource information system;

(b) [illegible]

(c) existing sources of relevant data in the public sector;

(d) data acquisition, storage, and retrieval methodologies that are economical and efficient, that minimize or eliminate the duplication of databases, and that [illegible]

(e) probable costs to agencies furnishing required data and probable costs of managing the data;

(f) probable benefits to be realized by the establishment of a natural resource information system;

(g) operation of the Montana natural heritage program; and

(h) other items of importance to the establishment of a natural resource information system.

(3) It is not intended that the system shall require fieldwork to produce data. The system is intended to facilitate the management of data collected by state agencies in the normal course of their operations.

History: En. Sec. 4, Ch. 650, L. 1983; amd. Sec. 7, Ch. 395, L. 1985; amd. Sec. 15, Ch. 110, L. 2023.

Cross-References

State information and research system, 90-1-109.

90-15-302. Natural heritage program. (1) There is a Montana natural heritage program to be operated by the library. In order to establish the program, the library may contract with an independent contractor or may employ necessary staff. In order to minimize costs, the library or other state agencies may make available state resources and facilities to an independent contractor as part of a contract for services.

(2) The Montana natural heritage program shall be designed to be compatible with similar programs in other states. This program is to be an initial step in the formulation of the comprehensive natural resource information system referred to in 90-15-301 and is to be considered a part of the system.

History: En. Sec. 5, Ch. 650, L. 1983; amd. Sec. 8, Ch. 395, L. 1985.

90-15-303. Interagency cooperation. (1) State agencies shall cooperate with the library in the planning of the natural resource information system.

(2) Within the limits of available resources, state agencies shall provide data requested by the library for purposes of the natural resource information system and the Montana natural heritage program. If an agency does not possess requested data or is unable to locate requested data, the agency shall inform the library. It is not necessary for an agency to conduct fieldwork or literature searches to obtain requested data.

History: En. Sec. 6, Ch. 650, L. 1983; amd. Sec. 9, Ch. 395, L. 1985; amd. Sec. 4, Ch. 48, L. 1997; amd. Sec. 16, Ch. 110, L. 2023.

90-15-304. Availability of information. (1) Except as provided in subsection (3), the library shall make information from the natural resource information system available to local, state, and federal agencies and to the general public.

(2) The library may establish a fee system for information requests in order to cover the costs of providing requested information.

(3) If necessary, the library shall establish procedures to protect confidential information in the possession of state agencies.

History: En. Sec. 7, Ch. 650, L. 1983; amd. Sec. 10, Ch. 395, L. 1985.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records generally, Title 2, ch. 6, part 10.

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